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IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE

SW/Corner Ridge Road & Joel Court

(Ivy Hill Substation) * ZONING COMMISSIONER

8th Election District

3rd Councilmanic District * OF BALTIMORE COUNTY

* Case No. 96-117-SPH

Baltimore Gas & Electric Company, Legal Owners;

Friends of the Ridge - Petitioners

* * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing for that property located on the southwest Corner of Ridge Road and Joel Court in Reisterstown. The property is owned by the Baltimore Gas and Electric Company (BGE) and is the site of a transformer station operated by that utility. The Petition, however, was filed by an entity known as Friends of the Ridge, an organization of approximately 11 households located in the vicinity of the subject site. The Friends of the Ridge bring the subject Petition, seeking clarification of the use of the property by BGE, and a determination as to whether said use is permissible under the Baltimore County Zoning Regulations (B.C.Z.R.) and the special exception approval granted in prior Case No. 94-452-XA by the Board of Appeals. Specifically, the Friends of the Ridge question four different aspects of improvements on the property and the use thereof. These four items are: a) the height of structures and equipment; b) the number of structures and equipment; c) the existence of an additional roadbed on the property; and, d) the existence of posts and a tractor trailer with a mobile transformer located thereon.

This matter was duly scheduled for a public hearing which was conducted on March 20, 1997. Appearing as representatives on behalf of Friends of the Ridge were Rosemary Hanley and Pam Follo. The Petitioners

were represented by J. Carroll Holzer, Esquire. Appearing on behalf of BGE was Charles D. Lacey. BGE was represented by Robert A. Hoffman, Esquire.

Preliminarily, BGE offered a Motion For Determination of Zoning Commissioner's Jurisdiction to hear the Petition for Special Hearing, seeking an Order dismissing that Petition. Through Counsel, the Petitioners filed a response to that Motion. The Motion and Response thereto are contained within the case file and are a part of the record of this case. Those pleadings speak for themselves. As indicated from the Bench during the proceedings, I believe that jurisdiction to hear this Petition is proper and therefore, deny BGE's Motion.

Turning to the merits of the case, I am familiar with the subject property and issues presented herein by virtue of a prior case heard by me, namely, Case No. 94-452-XA. In that case, BGE petitioned for special exception and variance relief for an outdoor electric public utility service center (electric substation) to be located in an R.C.5 zone, and to permit structures as close as 0 feet from an internal lot line in lieu of the required 50-foot building setback. Those Petitions came before me and a public hearing was conducted on June 21, 1994. By Order dated June 24, 1994, the Petitions for Special Exception and Variance were granted.

Testimony and evidence presented in that case revealed that BGE owned a portion of the site as far back as 1956. Subsequently, a property adjacent to the original holding was acquired in December 1988 and at the time Case No. 94-452-XA was pending, BGE was under contract to acquire a third, adjacent tract. Apparently, that acquisition was ultimately consummated. BGE's ultimate holdings consisted of a property 2.9 acres in area, zoned R.C.5. On the original piece acquired in 1956, BG&E installed an

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electric substation. Obviously, in the intervening years, the geographic area surrounding this site has undergone significant development. The Petitions filed in Case No. 94-452-XA sought approval to modernize and enlarge the electric substation in order to meet these increased needs. As noted above, the Petitions were granted. The Protestants in that case (Petitioners herein) thereafter organized and formed the coalition known as Friends of the Ridge. Unhappy with the decision issued by me in the prior case, they filed an appeal to the County Board of Appeals. The Board, following a de novo hearing, approved the Petitions for Special Exception and Variance. Unhappy with that result, the Friends of the Ridge appealed to the Circuit Court for Baltimore County, which affirmed the Board's decision. Presently, the matter is pending before the Court of Special Appeals in Annapolis.

In the instant case, the Friends of the Ridge complain that BGE has improved the property in a manner inconsistent with the site plan which was considered by the Board during the hearing before it. Copies of that site plan (Petitioner's Exhibit 1), as well as the site plan submitted by BGE as part of the permit application (Petitioner's Exhibit 3), were submitted at the hearing before me. As stated within the Petition, the Friends of the Ridge claim that improvements on the site are inconsistent with the equipment and use approved by the County Board of Appeals.

First, the Petitioners take issue with the number of structures and equipment, claiming that there are more structures actually located on-site than was approved by the Board. However, during her testimony, Mrs. Hanley admitted that she was unable to identify any structures which were not previously approved, and she was unable to offer any testimony that, in fact, more structures existed than were approved. Moreover,

testimony offered by Mr. Lacey was that the exact number of structures previously approved had been installed or were contemplated. Based on this uncontradicted testimony, I must find that there is no inconsistency between the number of structures and equipment actually used or proposed by BGE to that approved by the Board of Appeals.

The second issue relates to an additional roadbed. In this regard, it is to be noted that the site will not be entirely developed by BGE. In order to preserve a buffer area along the perimeter of the property, BGE proposes to develop only the interior of the site. Specifically, an area surrounded by fence, as shown on the site plan, is designated for improvement.

Additional testimony offered revealed that due in part to the length of litigation and age of equipment, there has been an equipment failure on site. In order to continue providing electric power, BGE has caused there to be located a temporary transformer on the property. This transformer is housed on the back of a tractor trailer. Moreover, to prevent the tractor trailer from sinking into the ground in the event of wet weather, a small macadam paved area has been added to the interior of the site on which the trailer is parked.

Although this is technically a new improvement which was not on the previous plan, it is of no significance. Surely, the Friends of the Ridge cannot complain of this macadam addition. By installing a small area of macadam within the fenced-in portion of the site, BG&E has been able to further screen the temporary transformer, and, more importantly, provide additional public safety. Notwithstanding their opposition, the neighborhood coalition cannot seriously believe it better that dangerous electrical equipment be stored on the macadam parking area outside of the

fenced interior of the property. Thus, I find no impropriety in this respect.

The third issue relates to the actual mobile transformer itself and the tractor trailer-bed upon which it is situated. Furthermore, additional posts have been installed adjacent to the tractor trailer's present location. In this regard, Mr. Lacey testified, as noted above, that there had been a failure of aged equipment on site and that the mobile transformer had been brought onto the property to continue service. The posts were added only to provide additional safety features to prevent the vehicle from striking any existing equipment. Moreover, Mr. Lacey testified that the mobile transformer would be removed once the site is improved with permanent equipment. Apparently BGE has not undertaken the expense of moving forward with its plans in full until such time as litigation is If successful, BGE will install its permanent equipment and concluded. remove the mobile transformer. I believe that such a plan is appropriate Thus, for so long as the mobile and consistent with prior approvals. transformer is on site only during times of failure or repair of permanent equipment, the authority obtained in the prior case is not violated.

Last, the Petitioners complained that certain of the structures on the site are taller than what was previously shown on the plan. In some instances, this is indeed the case. There has been a modest increase in some of the heights of the antennae and related equipment. In this regard, Mr. Lacey testified that BGE's vendors have changed since the original approvals and that there has been some modernization in equipment models and features. Some of the equipment is slightly different in configuration. However, as explained by Mr. Lacey, these differences are of no practical impact. This is not a case where equipment previously

would be buffered and is now too large to be adequately screened. I find the changes modest and within a reasonable amount of tolerance to the provisions of the prior Order. Thus, BGE's proposed utilization of the site is consistent, so long as the mobile transformer is removed, except during periods of repair or maintenance.

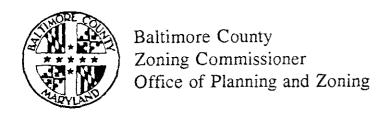
Pursuant to the advertisement, posting of the property, and public hearing held thereon, and for the reasons set forth above, the relief requested in the Petition for Special Hearing must be denied. In my judgment, the minor differences which do exist are of no practical significance.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of April, 1997 that the use of the property by BGE is consistent with and permissible under the Baltimore County Zoning Regulations (B.C.Z.R.) and the special exception approval granted in prior Case No. 94-452-XA by the Board of Appeals, and as such, the Petition for Special Hearing be and is hereby DENIED.

LAWRENCE E. SCHMIDT Zoning Commissioner

for Baltimore County

LES:bjs



Suite 112, Courthouse 400 Washington Avenue Towson, Maryland 21204 (410) 887-4386

April 8, 1997

J. Carroll Holzer, Esquire 305 Washington Avenue, Suite 502 Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SW/Corner Ridge Road & Joel Court
(Ivy Hill Substation)
8th Election District - 3rd Councilmanic District
Baltimore Gas & Electric Company, Legal Owners;
Friends of the Ridge - Petitioners
Case No. 96-117-SPH

Dear Mr. Holzer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

LES:bjs

cc: Robert A. Hoffman, Esquire, Venable, Baetjer & Howard 210 Allegheny Avenue, Towson, Md. 21204

Mr. Charles D. Lacey, Baltimore Gas & Electric Company P.O. Box 1475, Baltimore, Md. 21203

Ms. Pam Follo, 1 Joel Court, Reisterstown, Md. 21136

People's Counsel; Case/File

PETITION OF FRIENDS OF THE RIDGE FOR A SPECIAL HEARING FOR PROPERTY LOCATED AT THE SOUTHWEST CORNER OF INTERSECTION OF RIDGE ROAD AND JOEL COURT

- BEFORE THE ZONING
- * COMMISSIONER OF
- * BALTIMORE COUNTY
- Case No. 96-117-SPH

PETITIONERS' RESPONSE TO BGE'S MOTION ON JURISDICTION

Petitioners, Friends of the Ridge, by J. Carroll Holzer and Holzer and Lee, hereby respond to Baltimore Gas and Electric Company's Prehearing Motion for Determination of Zoning Commissioner's Jurisdiction to Hear Petition for Special Hearing and responds as follows:

- 1. "Friends of the Ridge" is an interested person within the meaning of BCZR, Sec. 500.7 for the following reasons:
 - a.) The BCZR, Sec. 500.7, grants the right of any interested person to Petition the
 Zoning Commissioner for a public hearing.
 - b.) Section 500.7 has been reviewed and approved many times by the Zoning Commissioner, most recently in Case No. 96-167-SPH (Mt. Vista Golf Course) in which the Zoning Commissioner stated, "Kingsville Community Association interest in this matter is generated by the fact that the subject property lies amidst the borders of that residential community and the activity on the subject site is of interest and concern to the members of that Association." (See Exhibit A attached hereto and incorporated herein).
 - c.) A non-property owner Petition for Special Hearing has previously been addressed and approved by the present Zoning Commissioner in Case No. 93-93-SPH (Long

Green Valley Association v. Executive Auto Paint and Repair). (see Exhibit B, attached hereto and incorporated herein).

- d.) Additionally, Friends of the Ridge has been a recognized community organization whose sole purpose is and has been since its inception to protect the property interests of its members along Joel Court and Ridge Roads; Friends of the Ridge has maintained a commercial bank account, and has been recognized with specificity as a party before the Circuit Court for Baltimore County and the Court of Special Appeals in the appeal of the Special Exception involving the same parties. BGE is well aware of Friends of the Ridge and their subject matter and geographic identity as evidenced by the attached documents. (See Exhibits C, D, E, F, G, and H attached hereto and incorporated herein).
- e.) Throughout the history of this petition, originally filed in 1995 with PADM, both BGE and Baltimore County have acknowledged through correspondence Friends of the Ridge as the Petitioners. (See Exhibits I and J attached hereto and incorporated herein).
- f.) Baltimore County Zoning Regulation, Section 500.10 recognizes appeals from the Zoning Commissioner to the County Board of appeals by "persons jointly and severally."
- g.) Friends of the Ridge believe for all the above reasons that they collectively have standing before the Zoning Commissioner; alternatively, however, in view of BGE's awareness of the identity of individual members of Friends of the Ridge, Petitioners respectfully request permission from the Zoning Commissioner to amend their Petition

for Special Hearing to include the 22 individuals of Friends of the Ridge as shown on Exhibit D.

- 2. Section 500.7 provides the Zoning Commissioner with the authority to conduct hearings upon request and to determine "any rights whatsoever of such person in any property." Section 500.6 provides the Zoning Commissioner the right to conduct hearings involving violation, or alleged violation, or non compliance with any zoning regulation.
- 3. Petitioners submit that they are not alleging <u>prospective</u> violations of the BCZR, but actual violation of the zoning regulations based upon BGE's submitted plans to PADM, and permits already received to date and acted upon by Baltimore County and BGE.
- 4. The authority of the Zoning Commissioner pursuant to Section 500.7 is based upon previous Zoning Commissioner decisions, including Case No. 96-167-SPH (Mt. Vista Golf Course), and is broader than alleged in BGE's Motion found in Paragraph #4. Petitioner is not herein attempting to "relitigate" BGE's being granted a previous Special Exception, but rather, an interpretation and enforcement of the Special Exception granted by the County Board of Appeals analogous to the Mt. Vista case.
- 5. Petitioners do not have any other remedies for the following reasons:
 - a.) The CBA has ruled in previous cases that only "applicants" as defined in Section 7-36(a)(3) of the County Code for building permits, and other permits, possess standing to take an appeal to the County Board of Appeals from the issuance of a permit. (See Exhibit K, Case No. CBA-95-162; and Exhibit L, Case No. CBA-94-176, attached hereto and incorporated herein).
 - b.) Section 26-120 of the Baltimore County Cole, in relevant part, states, "In addition to all other remedies provided by law, ... abutting and adjacent property owners,

whether specially damaged or not, may maintain an action in any appropriate court for an injunction ..." Therefore, Sec. 26-120 is not an exclusive remedy. If Petitioners were to file an injunction pursuant to Sec. 26-120, Petitioners submit that BGE would claim that Petitioners did not first exhaust their administrative remedies.

6. Petitioners previously filed requests for Injunctive relief with the Circuit Court for Baltimore County and the Maryland Court of Special Appeals, but were denied. Those injunctions were not filed to interpret, or enforce the alleged violation of the Special Exception Order of the CBA, but, rather, to stay the operation of the permits and construction of the BGE substation facility on the merits of the Special Exception pending the decisions of the Circuit Court and the Court of Special Appeals. Said Injunction relief was denied.

WHEREFORE, for all the foregoing reasons, the Zoning Commissioner should hear the instant petition on its merits, and reject BGE's Motion for Determination of Zoning Commissioner's Jurisdiction to Hear Petition for Special Hearing. The Zoning Commissioner is well aware of the parallels and similarities between the instant case, and Case No. 96-167-SPH, Mt. Vista Golf Course, having adjudicated the matter in 1996.

Respectfully submitted

J. Carroll Holzer

305 Washington Ave.

Suite 502

Towson, MD 21204

(410)825-6961

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the <u>10</u> Day of March, 1997, a copy of the forgoing Petitioner's Response was Hand Delivered to Robert A. Hoffman, Esquire, at Venable, Baetjer and Howard, 210 Allegheny Ave., Towson, MD 21204.

J. Carroll Holzer

A:\Motions\BGE.Ans

BEFORE THE PETITION FOR SPECIAL HEARING IN RE:

NE/S Raphael Road, across from its

ZONING COMMISSIONER intersection w/Mount Vista Road *

(11101 Raphael Road)

OF BALTIMORE COUNTY 11th Election District

5th Councilmanic District

Case No. 96-167-SPH

Mt. Vista Golf Course Ltd. Part., Owners; Kingsville Community Assoc., Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as 11101 Raphael Road, located just north of Philadelphia Road and the John F. Kennedy Memorial Highway (I-95) Unlike the vast majority of zoning Petitions which come in Bradshaw. before the Zoning Commissioner's Office for public hearing, the subject Petition was not filed by the property owners, the Mt. Vista Golf Course Limited Partnership. Rather, the Petition was filed by the Kingsville Community Association, through J. Carroll Holzer, Esquire. The Kingsville Community Association's interest in this matter is generated by the fact that the subject property lies amidst the borders of that residential community and the activity on the subject site is of interest and concern the members of that Association. Moreover, it is clear that the Petition is properly before this Zoning Commissioner from a jurisdictional standpoint and that the Petitioners have the requisite interest and standing to seek relief in this matter. Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) grants "...the right of any interested person to Petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises, or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations." Thus, under the broad and sweeping author-

Exh. H

ity of that Section, the Petitioners properly filed the instant Petition for Special Hearing and I may consider same.

The property at issue consists of approximately 110 acres in area, zoned R.C. 5, and is in use as an Executive 18-hole golf course. The site lies immediately adjacent to the intersection of Raphael Road and Mt. Vista Road, a short distance from I-95 in Bradshaw. In addition to the golf course, the property contains a clubhouse building, the size of which generated the Petitioners' request for special hearing relief. The property also contains a driving range facility and an area for parking.

The Petition for Special Hearing poses a simple question; whether the clubhouse, as constructed, is in conformance with and meets the spirit and intent of the special exception granted in prior Case No. 89-190-X. Moreover, the Petition asks whether the restaurant use, as contained within the clubhouse, is permitted under the R.C. 5 special exception, when the special exception request and Order approving same was for a "golf course."

Appearing at the requisite public hearing held in this case were Nancy Hastings, Diane Fetter Neas, and Paul M. Plowman, all on behalf of the Kingsville Community Association. Also appearing as interested citizens were Elizabeth Healey, Charlotte Pine, and Kevin Lindsey, who resides directly across from the subject site. The Petitioners were represented by J. Carroll Holzer, Esquire. Appearing on behalf of the property owners were James F. Neslein, an employee of the facility, and Richard Casey. The property owners were represented by Thomas L. Hennessey, Esquire. Joseph Merrey and John Sullivan, with the Department of Permits and Development Management (DPDM), and Bruce Seeley, with the Department of Environmental Protection and Resource Management (DEPRM), also appeared and testified.

This matter is a difficult case. However, as is often true with such matters, the facts of the case are not in significant dispute. The testimony and evidence presented was clear and, for the most part, undisputed. As described above, the property is the site of an 18-hole golf course with related facilities; however, it is the zoning and County approval process of this use which is at the center of the controversy.

The property first came before the zoning authorities of Baltimore County in Case No. 89-190-X. In that case, the Petitioners, James F. Stadler, et al, sought special exception relief to permit "a golf course in an R.C. 5 zone." The matter came before then Deputy Zoning Commissioner Ann M. Nastarowicz, who granted the Petition by Order dated December 16, 1988. Notwithstanding approval of the project, Deputy Commissioner Nastarowicz' Order contained a number of restrictions. These included a requirement that CRG approval be obtained for the project, that the hours of operation not exceed 6:00 AM to 9:00 PM, that the golf course and its ancillary uses be utilized only between April 1st and October 31st of any given year, and that there be no lighting for the driving range. Clearly, it was Deputy Commissioner Nastarowicz' intent to approve the use, but restrict same so as to prevent any adverse impact on the surrounding community. (See Petitioner's Exhibit No. 3, Case File No. 89-190-X).

Having obtained the special exception relief, the Petitioners then moved forward to obtain CRG approval. In Case No. XI-624, CRG approval was obtained on or about October 25, 1990. The plan approved at that time was substantially in accordance with the special exception plan, however, there were certain additional modifications to the site plan imposed by the CRG. Moreover, the CRG approval was noted to expire on October 25, 1993. (See Petitioner's Exhibit No. 4, CRG Case File No. XI-624).

In order to bring the CRG plan into compliance with the approved special exception plan, the owners filed a Petition for Special Hearing in Case No. 91-209-SPH on or about December 4, 1990. In that case, the property owners requested an amendment to the site plan approved in the special exception Case No. 89-190-X. Relief was also requested to approve an extension of the time frame for utilizing the special exception previously granted from two years to four years. That case also came in for public hearing before Deputy Commissioner Ann Nastarowicz. By her Order dated February 12, 1991, Deputy Commissioner Nastarowicz granted the relief, again imposing numerous conditions and restrictions. Her Order, which speaks for itself, and that case file were offered in the instant case as Petitioner's Exhibit No. 6.

The fourth act in this drama occurred in July, 1991. Specifically, on July 25, 1991, the property owners again petitioned the County for special hearing relief in Case No. 92-37-SPH. In that case, an amendment to certain of the restrictions imposed by Deputy Commissioner Nastarowicz' prior Orders was sought. More particularly, the Petitioners sought approval for a lighted driving range, an alteration in the operating hours, and generally modify the stringent conditions which had been imposed in the prior cases. Deputy Commissioner Nastarowicz had left the Zoning Office by that time and the matter came before Deputy Zoning Commissioner Timothy M. Kotroco for a public hearing. Deputy Commissioner Kotroco granted, in part, and denied, in part, the relief requested by Order dated November 5, 1991. Following the issuance of that opinion, a Motion for Reconsideration was filed by the property owners, and by Order issued May 27, 1992, Deputy Commissioner Kotroco denied the Motion.

The history of the matter as recounted above through May 1992 is clear. Essentially, the Petitioners had obtained a special exception to operate a golf course on the site, had obtained CRG approval and special hearing relief to bring the CRG plan and zoning plan into compliance with one another, and certain modifications had been allowed (and others denied) by subsequent proceedings. Finally, at that point, it appears that the Petitioners were ready to build.

Generally, the final approval which must be obtained from Baltimore County before actual construction begins is the acquisition of a building permit. Building permits in Baltimore County were, at that time, issued by the Department of Permits and Licenses. That agency is now part of the Department of Permits and Development Management (DPDM), which was formerly known as the Zoning Administration and Development Management When a permit is requested, the application for same is (ZADM) office. circulated among a number of agencies in Baltimore County for review and At that time, it was the responsibility of ZADM to review the comment. application and to insure that same was consistent with prior zoning approvals which had been issued. In this case, an application for a building permit was filed in early 1994. Among the improvements to be constructed as shown on the permit application (Petitioner's Exhibit 2B), was a one and one-half story clubhouse building. The building was shown on the permit application and the accompanying site plan to be 105' x 87' in dimension.

application was significantly different from that which was shown in all of the prior cases. Specifically, a review of the prior plans submitted in both the CRG case and the prior zoning hearings shows that a clubhouse building of 40' x 60' was proposed. Thus, the building requested by permit

was substantially larger than that which had been approved through the CRG and zoning processes.

John Sullivan, a Planner II in the Department of Permits and Development Management (DPDM), testified candidly about what occurred at that time. He described the permitting procedure in detail and noted that the permit application was given a cursory review when same was initially presented to the County. At that review, the plan is not examined in any detail, but only reviewed to insure minimal compliance with County requirements. If the plan is acceptable, the DPDM office signs off by indicating that the permit is "OK to File". Later, the plan undergoes a second and more thorough review. In this case, the permit and accompanying plan were examined on March 3, 1994. Mr. Sullivan candidly testified that he erroneously approved the plan and released the permit at that time. He indicated that a significant concern on which he focused at that time was whether the CRG and special exception approvals were still valid and had not Thus, he indicated he carefully examined the plan for compliance with the time deadlines imposed within those approvals. noted that the CRG plan and the plan accompanying the permit application were drawn to different scales. In any event, it is clear that he erroneously approved the plan accompanying the permit, which clearly shows a larger building than had been approved under the CRG and zoning processes. Nevertheless, having acquired the permit, the property owners went about constructing the building. Ultimately, construction of a building within the dimensions shown on the permit application plan (105' x 87') commenced.

Obviously, it did not take long for members of the surrounding community to observe construction. They had been following this matter closely and expected to see a building 40° x 60° being constructed. When a

building much larger than that was observed under construction, they contacted the County. Mr. Sullivan, and others, realizing the mistake, issued a Stop Work Order and revoked the permit. Ultimately, the Petitioners in the instant case, the Kingsville Community Association, filed for special hearing relief as described above.

The central question to be addressed is easily framed. Is the County estopped from revoking its building permit? The other questions precisely presented in the special hearing must also be answered; whether the clubhouse building as constructed meets the spirit and intent of the special exception granted in Case No. 89-190-X, and whether the restaurant use as proposed within the building is permitted under the special exception granted.

Fortunately, the Courts of this case have frequently discussed the concept of estoppel. Most recently, in Baltimore County, Judge James Smith, Jr. of the Circuit Court, comprehensively discussed this topic Judge Smith's wellin Case No. 94-CD-102-57 (In Re: Long Green Hotel). reasoned opinion, accurately described the state of the law of equitable estoppel in Maryland. As explained in Fitch v. Double "U" Sales Corporation, 212 Md. 324 (1957), "Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which may have otherwise existed, either of property, of contract, or, of remedy against another person who has in good faith relied upon such conduct and has been led thereby to change his position for the worse, and who, on his part, acquired some corresponding right, either of property, of contract, or of remedy." (Page 338). In Long Green Hotel, supra, Judge Smith determined that Baltimore County was equitably estopped from undertaking any zoning enforcement proceedings against the subject property's owner. Thus, Judge Smith concluded that the "doctrine of zoning estoppel" is alive and well in Maryland.

The Court of Special Appeals apparently agrees; however, the Court of Appeals has not precisely taken up the issue. (See Cromwell v. Ward, 102 Md. App. 691 (1995) at Page 723, Footnote 9). In that Case, Judge Cathell, writing for the majority, opined that the doctrine of zoning estoppel is the law of Maryland. However, he observed that same should be sparingly applied and cited prior authority to the effect that "the mere issuance of a permit...does not create a vested right, or estop the municipal authorities from revoking it." Citations omitted, Cromwell, infra, Page 723.

In <u>Permanent Finance Corporation v. Montgomery County</u>, 308 Md. 239 (1986), the Court of Appeals held that "A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law." (Page 129). Moreover the Court seemed to recognize the difference in the application of estoppel when a County official knowingly violates a County ordinance as opposed to mere oversight or negligence by the County. See also, Offen v. County Council, 96 Md. App. 526 (1993).

In this case, the evidence is uncontradicted that the building permit was issued by Baltimore County in error. Mr. Sullivan's undisputed testimony and the documentary evidence in support thereof is persuasive. Quite frankly, it is clear that he erroneously authorized issuance of the permit, failing to observe that the building was larger than that which had been on the approved plan. His error was one of simple negligence.

He candidly admitted that he did not notice the larger size of the building on the building permit plan.

Based on this uncontradicted testimony, I easily find that the doctrine of zoning estoppel is not applicable here. In my judgment, the law is quite simple that an illegally issued permit cannot form the basis of the application of zoning estoppel against the County. This is particularly so in that the error was occasioned purely by oversight by the County employee.

Having determined that estoppel does not apply, attention is next turned to the questions framed directly in the Petition for Special Hearing. In answer to the first, the manifest answer is "No". Surely, the clubhouse building, as constructed, is not in conformance with and fails to meet the spirit and intent of the special exception granted in Case No. 89-190-X, as modified in subsequent cases. The building is significantly larger and as is clear from the numerous restrictions imposed by Deputy Commissioner Nastarowicz, is entirely inconsistent with what was approved. Thus, the building is illegal and cannot be afforded any legitimacy by reason of the prior approvals.

As to the second question, the answer must also be "No". That is, the restaurant use is not permissible under the approvals granted in the original Petition for Special Exception, as modified by prior cases. This conclusion is reached following an examination of Section 101 of the B.C.Z.R. Therein, the term "golf course" is not defined. In such an instance, the Regulations direct the reader to consult Webster's Third New International Dictionary of the English Language, Unabridged. In that source, a golf course is defined as "an area of land laid out for the game of golf, with a series of 9 or 18 holes, including tee, fairway and green,

and often one or more natural or artificial hazards." That definition no where includes any building.

However, the B.C.Z.R does define country club in Section 101 as a "9 or 18-hole golf course with a clubhouse and other appropriate facilities which may include other recreational facilities." Clearly, a country club is more of an intense use and a golf course is frequently a part of such use. However, the property owners acquired approval to construct/operate a golf course, not a country club. Moreover, the building approved as accessory to the golf course is not what was constructed. For these reasons, the restaurant use is not now allowed.

Although the questions raised by the Petition for Special Exception are answered, other issues remain. Specifically, how may the Petitioners now use the property? It is clear that the golf course, in and of itself, may continue to be utilized subject to the previous Orders. The special exception approval for the course was granted and play on the course shall be permitted. However, it is equally clear that the building, in and of itself, is illegal. Thus, the Petitioners are left with two choices; eliminate the structure or legitimize same. Clearly, the Petitioners could bring the project into compliance with the prior approvals by demolishing as much of the building as is required so as to result in a 40' x 60' structure, as shown on the previously approved site plan. This alternative is no doubt unacceptable.

In the alternative, the Petitioners may Petition for special hearing relief to amend the previously approved special exception. I render no judgment in this case as to the propriety of the enlarged building and the uses therein. Such topics would be the subject of an amended Petition wherein the property owners would have to demonstrate that the structure

and proposed uses therein would not be detrimental to the health, safety and general welfare of the locale, pursuant to Section 502.1 of the B.C.Z.R.

Therefore, based on the foregoing analysis, I will require the Petitioners to elect one option or the other within sixty (60) days of the date of this Order. That is, within that time, the Petitioners must either demolish that portion of the building necessary so as to convert same into compliance, or file the requisite zoning Petition as described herein. In the interim, and in the event a Petition is filed, and prior to a decision being rendered, the building can be used in a limited manner. Certainly, a small pro shop with an area for sales of greens fees and golf related items is proper, as is an area for vending machines. However, anything to a greater extent than those limited purposes appears above and beyond the restrictions previously imposed. Until those restrictions are lifted or are altered, the use must be so restricted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the Petition for Special Hearing shall be granted.

THEREFORE IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of June, 1996 that the clubhouse, as constructed, is not in conformance with and does not meet the spirit and intent of the special exception granted in prior Case No. 89-190-X, and as such, the Petition for Special Hearing is GRANTED; and,

IT IS FURTHER ORDERED that the restaurant use as contained within the clubhouse is <u>not</u> permitted under the R.C. 5 special exception relief granted in prior Case No. 89-190-X, and as such, the Petition for Special Hearing is GRANTED; and.

IT IS FURTHER ORDERED that the Petitioners shall have sixty (60) days from the date of this Order to either bring the clubhouse building into compliance with the prior Order, which granted a building $40' \times 60'$ in dimension, or file a Petition for Special Hearing to amend the relief granted in the previously approved special exception.

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.

LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

LES:bjs

PETITION FOR SPECIAL HEARING IN RE:

SE/S Long Green Pike, 170' SW of the c/l of Fork Road (13523 Long Green Pike) 11th Election District

6th Councilmanic District

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 93-93-SPH

Long Green Valley Assoc., et al

Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing originally filed by the Long Green Valley Association, the Greater Kingsville Civic Association, and various individuals who reside near the property which is the subject of this Petition. At the beginning of the public hearing held for this case, the Greater Kingsville Civic Association withdrew as a Petitioner. Thus, the matter proceeded through the efforts of the Long Green Valley Association and those individuals previously referred to above and designated on the Petition. The Petition seeks a determination as to whether approval should be given to permit the use of adjoining property, zoned R.C. 2 and owned by Executive and the second of the second Auto and Paint Repair, Inc., to support a waste disposal system for the subject commercial property, known as 13523 Long Green Pike, zoned B.L.-The subject property and waste disposal system are more particularly C.R. described on Petitioner's Exhibit 2.

The vast majority of zoning petitions filed in Baltimore County are submitted by or on behalf of the owner of the property which is the subject of the Petition. However, the instant case arises for consideration in a different manner. As noted above, the Petition has been filed by the local community associations and a number of interested parties as The relief which they request pertains not to a property individuals.

Exh. B

-owned by them but located within the geographic boundaries of the Long Green Valley Association.

At the hearing held in this matter, the Petitioners were represented by J. Carroll Holzer, Esquire. The property owner, Orville Jones, was represented by John Gontrum, Esquire. The parties and their counsel appeared at the public hearing held for this case at which time testimony and evidence were taken as to the issues presented. Subsequently, counsel submitted lengthy memoranda in support of their respective positions.

FINDINGS OF FACT

As is the case with many cases which present difficult legal issues, the facts in the instant case are relatively simple and largely not in dispute. As noted above, Mr. Jones owns the subject property at 13523 Long Green Pike located near the quiet country community of Baldwin. The property is located near the intersection of Long Green Pike and Fork Road. As is the case with similar commercially hubbed rural areas in Baltimore County, the subject property serves as part of the small commercial center of a rural locale. That is, although the subject property and some abutting properties are zoned for business/commercial use, this is largely an agricultural area zoned R.C. 2. The property is approximately 1.056 acres in area, is roughly square shaped, and is improved with a commercial building.

Testimony and evidence presented was that Mr. Jones acquired the subject property in April 1987 at public auction. The building located thereon at that time was built in 1904. The building was previously known as the Long Green Hotel and existed as a hotel/general store for many years. Subsequent to his acquisition, Mr. Jones decided to raze the building and replace same with another commercial use. A new building was

constructed which now houses a High's dairy store, a dentist's office and a Laundromat. Further, a small parking area is provided.

The thrust of the case relates to the septic system proposed for this site. Being rural in location, the property does not enjoy public water and sewer service. Apparently, Mr. Jones originally intended that sewage disposal for the subject property would be accomplished by way of a septic system which would be situated entirely on the property. (See Jones' Exhibit 6, letter from the State of Maryland, Department of the Specifically, Mr. Jones intended to Environment dated July 28, 1988). install a sand mound sewage disposal system. Unfortunately, however, this system was never installed. Although governmental approval had been given (see letter dated October 5, 1989 from the Baltimore County Department of Environmental Protection and Resource Management {DEPRM}), the proposed sand mound septic system was rendered unusable due to disturbance of the site by heavy equipment during construction of the new building. Thus, Mr. Jones was forced to look for an alternative to satisfy his sewage disposal needs. In fact, a stop work order was issued by Baltimore County on March 29, 1991 until a suitable alternative could be found to replace the proposed system.

by Mr. Jones in the latter portion of 1991. Specifically, the property owner reached agreement with Baltimore County to construct a private septic system on an adjacent unimproved property, pursuant to a recorded easement reserving the property for that one use. Correspondence from the Maryland Department of Natural Resources (DNR) dated November 27, 1991, and from DEDRM, dated August 26, 1991, describes the particulars of the proposed system and the County's agreement that same is appropriate and acceptable

to the reviewing government authorities. It is of particular note that the surrounding residents were well aware of these plans. Specifically, testimony and evidence received included a letter from the Long Green Valley Association to DEPRM dated November 25, 1991. That letter questioned the wisdom and propriety of the proposed off-site septic system. Mr. Jones, who received a copy of that letter, responded both to DEPRM and the Long Green Valley Association by way of his letter dated December 17, 1991. DEPRM likewise responded to Long Green Valley Association's concerns by way of correspondence dated January 2, 1992. Further, the record discloses correspondence from DEPRM to Ms. Charlotte Pine of the Long Green Valley Association on November 20, 1991. Based on this exchange of correspondence, it is clear that all concerned were well aware of Mr. Jones' proposed alternative. As noted in DEPRM's letter of January 2, 1992, the County's stop work order "will be rescinded upon compliance with all reforth...and recordation of the necessary sewage disposal area easements in the Land Records of Baltimore County." Clearly, the Long Green Valley Association and its members were aware that the County and State had given their blessing to the proposed alternative septic Armed with the County's approval, Mr. Jones then went about the system. process of obtaining the necessary easements from the adjoining property

ment.

Testimony and evidence presented was that Mr. Jones negotiated with Executive Auto Paint and Repair, Inc. and consummated the agreement to obtain the necessary easements. A deed was recorded among the Land Records of Baltimore County at Liber 9171, Page 356, evidencing that agree-The deed provides that Mr. Jones was provided the right to con-

owner, Executive Auto Paint and Repair, Inc. As noted above, this adjoin-

ing tract is zoned R.C. 2 and is unimproved.

struct, lay and maintain a private septic system, in, on, through, and across the land owned by Executive Auto Paint and Repair, Inc. This easement was more fully described on a site plan of the subject property which was attached thereto. Apparently, the easement was not conditional. Moreover, Mr. Jones paid the sum of \$25,000 for said easement. The easement was to continue until such time as Mr. Jones' property at 13523 Long Green Pike could be serviced with a public sewer line.

Having obtained and recorded the necessary easements, and having obtained governmental approval. Mr. Jones then went about constructing the septic system. Testimony and evidence received was that the system has been substantially completed. The High's store and dentist's office are apparently now up and running.

The instant case arose in approximately September 1992 when the Petitioners filed the subject Petition for Special Hearing. It is to be noted that this filing was made approximately four months after Mr. Jones executed and recorded the subject easement and over nine months after the County's exchange of correspondence with the community advising them of the County's approval of the proposed off-site sewage disposal system.

Having recited these facts, attention must now be given to the numerous issues presented herein. Those issues will be addressed in turn.

1) IS THIS CASE PROPERLY BEFORE THE ZONING COMMISSIONER?

As the litigants and their counsel were no doubt well aware during their presentation of the case before me, I actively participated at the Board of Appeals' level in the case entitled <u>United Parcel Service</u>, Inc. v. Peoples' Counsel for Baltimore County, 93 Md. App. 59, 611 A2d 993 (1992) which is presently pending on a writ of certiorari before the Maryland Court of Appeals. Since my appointment to my present position, I am

the opinion of the Honorable Joseph Murphy of the Circuit Court of Maryland for Baltimore County, and the reported decision by the Court of Special Appeals of Maryland. In their memoranda, the parties in the instant case quoted the law and facts discussed in UPS and their applicability to this matter. Both sides cite this case in discussing the issue as to whether the Zoning Commissioner can properly hear this case. In considering that question, one must be mindful of the form in which the original cases were brought. The instant case is now before me as Zoning Commissioner. UPS originally reared its head for the first time in the quasi-judicial review process before the County Board of Appeals. These cases have arisen differently and are easily distinguishable. Long Green Hotel is not UPS.

Harding

The Petition brought in the instant case is properly before me pursuant to the language set forth in Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). Therein, a broad and sweeping statement of authority is provided to the Zoning Commissioner. It is specifically provided that he "shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." Further on, the Section provides that such authority "shall include the right of any interested party to petition the Zoning Commissioner for a public hearing...to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations." As it relates to my jurisdiction under this section, the timing of the Petitioner's request is meaningless. Unlike UPS, the instant case does not come before me as an appeal or for review of a prior decision. The authority conferred in Section 500.7 of the B.C.Z.R. is broad indeed. The case is properly

before me under the proposed Petition for Special Hearing from a pure jurisdictional standpoint.

2) IS THE PROPOSED SEPTIC SYSTEM A "USE" OF LAND?

The essential issue to be addressed in this case is whether the proposed septic system can be permitted under the circumstances described above. Specifically, can a private septic system be installed on an adjoining piece of property, not owned by the property owner of the land being so served, when the subject property is zoned B.L. and the subservient property is zoned R.C. 2? Before determining this issue, a resolution of whether the proposed septic system is indeed a use is necessary.

isl.

The term "use" is not defined in Section 101 of the B.C.Z.R. such a case, the regulations require the reader to consult with the definition found in Webster's Third New International Dictionary. Therein, the term "use" is defined and enjoys a lengthy list of definitions which occupy The definitions include "the legal enjoyment of property an entire column. that consists in its employment, occupation, exercise or practice," and "the benefit in law of one or more persons, specifically, the benefit of or the profit arising from lands and tenements to which legal title is held by a person, or the act or practice of using something." these definitions suggest a broad scope of the term "use". The property owner suggests that the proposed septic system is not a use because it is entirely underground and that the surface of the land may still be used for livestock, grazing, and similar agricultural purposes. argument is too narrow in scope. Coal and diamond mining, as well as oil drilling, are all clearly uses of land, notwithstanding the fact that the specific activity entails a subterranean effort. Thus, it is clear that Mr. Jones' installation of a septic system, for the privilege of which he

paid the property owner \$25,000, constitutes a use of the Executive Auto

3) IS THE SEPTIC SYSTEM USE PERMITTED ON THE R.C.2 PARCEL OWNED BY EXECUTIVE AUTO PAINT AND REPAIR, INC.?

A great amount of testimony and legal argument was presented about this issue. The Petitioners aver that the proposed use of the property is not permitted by the B.C.Z.R. and is thus, illegal. Mr. Jones argues that the use is properly permitted under a variety of theories.

As is well settled, the B.C.Z.R. are inclusive; that is, only designated uses are allowed. If a particular use is not specifically delineated as permissible by right or special exception, it is not allowed. This conclusion is well settled and is stated both within the regulations and at law. Specifically, Section 102.1 of the B.C.Z.R. provides that "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations..." (emphasis added). Further, the Appellate Court's construction of this language is clear.

In an early and leading case before the Court of Special Appeals, the inclusive nature of the B.C.Z.R. was discussed. (See <u>Kowalski v. Lamar</u>, 25 Md. App. 493, 334 A2d. 536 (1975). Therein, the Court comprehensively discussed the B.C.Z.R. and noted that, "any use other than those permitted and being carried on as of right or by special exception is prohibited." <u>Kowalski</u>, Page 539. Thus, it is clear that the use must be identified in the B.C.Z.R. as being permissible by right or by special exception in order to be legitimate.

Moreover, Section 1A01.2.B of the B.C.Z.R. identifies uses permitted as of right in an R.C. 2 zone. Private septic systems are not specifi-

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uses permitted in an R.C. 2 zone by special exception. Again, a private septic system is not listed therein. Thus, by the clear meaning of the words used to describe the enumerated uses allowed by right or special exception, a private septic system (as a primary use of the property) is not permitted in an R.C. 2 zone.

Unable to locate specifically identified private septic systems within Sections 1A01.2.B or 2.C, the property owner attempts to carve a niche for the subject use under Section 1A01.2.B.5 of the B.C.Z.R. Therein, certain "utility type" uses are permitted as of right in an R.C. 2 zone. The Section permits telephone, telegraph, electric power or other lines or cable, as well as underground gas, water or sewer mains or storm drains as of right in an R.C. 2 zone. The property owner avers that this language should be expanded to not only include public utilities, but private systems as well. As stated in Mr. Jones' memoranda, individual septic system facilities serve the same purpose and function as larger, public facilities.

Although appreciative of these arguments, I believe that the property owner has improperly expanded the scope of permitted uses under Section 1A01.2.B.5 of the B.C.Z.R. Clearly, the precise terms used therein include only public utilities. It is a cardinal rule of statutory construction that the natural and ordinary import of the words used should be given to effectuate the real and actual intent of the Legislature. See State v. Fabritz, 276 Md. 416 (1975). The words of this Section, read in accordance with their clear meaning, no doubt contemplates public services and utilities will be permitted to occupy R.C. 2 zoned land. Further, although sewer mains are not defined in the B.C.Z.R., Webster's

defines "mains" as "a pipe, duct or circuit to or from which leads tributary branches of a utility system and which carries their combined flow."

Thus, sewer mains are part of a larger system and clearly accommodate a public as opposed to a private service. The language in this Section is clear; only public utilities are allowed. Thus, the property owner's reliance on and attempted expansion of this Section are misplaced.

while both litigants agreed that private septic systems were not precisely identified as permitted uses in the B.C.Z.R., substantial testimony, evidence and argument was offered regarding similar cases considered by this Office, the appellate courts of this State, and Courts of other jurisdictions. A review of those authorities are helpful in determining whether a private septic system is permissible in this instance.

Both parties cite one of the few reported decisions on point with the subject case. That case arose in Stamford, Connecticut and wound its way through the appellate process to the Supreme Court of Connecticut. (See Silitschanu v. Groesbeck, 208 Conn. 312, 543 A2d. 737 (1988). In that case, a similar issue was presented. Mr. Silitschanu, and others, owned real property in Stamford that was in close proximity to property owned by Mr. Groesbeck. Mr. Silitschanu and his partners desired to construct a three-story office building on the commercially zoned land with its appurtenant septic system to be located on an adjoining residential lot. The propriety of the construction of the proposed septic system was at issue. The Supreme Court of Connecticut concluded that the septic system in fact, was a structure (use) within the local zoning code. Further, since that use was not specifically authorized, it was not permitted.

This case was referenced with favor in an unreported decision by our own Court of Special Appeals. In GLP Development v. Maryland National

Capital Park and Planning Commission (No. 1755, September term, 1989) the Court acknowledged the Silitschanu decision and found same persuasive in the case before it. As were the facts in Silitschanu and the instant case, the property owner in the GLP Development case owned a commercially zoned tract which was proposed for development with commercial buildings, a septic system tank, parking and driveways. An adjoining parcel, zoned Rural-Cluster, was proposed to house the underground septic field consisting of filtering pipes for sewage disposal. The Court of Special Appeals affirmed the decision of the local planning board and concluded that the residentially zoned land could not be used for commercial purposes.

of Appeals' decision in Leimbach Construction Company v. City of Baltimore, 257 Md. 635 (1970). In this case, the Court of Appeals affirmed the judgment of the lower court which disallowed a commercial use on residentially zoned property. In that instance, the property owner proposed construction of a driveway over residential land to service the commercial property. In Leimbach, the Court concluded that said use was impermissible.

Thus, it appears that the uniform appellate decisions cited above, as applied to the instant case, would prohibit Mr. Jones' private septic field in his neighbor's R.C. 2 property.

Notwithstanding the absence of this particular use in the B.C.Z.R., and the apparent unanimity of the appellate decisions referenced above prohibiting said use, the property owner submits yet another argument to support its claim that the use is permitted. This argument centers upon the claim that the proposed septic system is accessory to the commercial development and should therefore be permitted. As authority for this proposition, Mr. Jones cites the prior practices and decisions of the

Zoning Office and similar agencies of Baltimore county. As to DEPRM's practices in the past, they cannot be considered authoritative or binding There appears no doubt that in certain other instances, DEPRM has approved arrangements which allow storm water management systems and similar uses on adjacent properties to serve an abutting commercial development. There is no doubt that this practice may be sound for environmen-In fact, it appears in the instant case that Mr. Jones' tal purposes. solution to his septic disposal woes is appropriate. The proposed off-site septic system has been approved by both the Maryland Department of Natural Resources (DNR) as well as Baltimore County's Department of Environmental Protection and Resource Management (DEPRM). From a technical environmental standpoint, the proposed system may be the most proper alternative. However, the fact that it works from a DEPRM standpoint and that similar practices have been employed at other locations in Baltimore County does not impact the issue before me. As I see it, this is a case of first impression presenting a novel question before this Office. Whether DEPRM or the Office of Planning and Zoning or other County agencies believe this to be a good approach is not persuasive; rather, the issue is presented in the context of a permitted use pursuant to the purview of the B.C.Z.R.

Nonetheless, there are similar cases which have been adjudged by this Office. Although not precedent, prior construction of the B.C.Z.R. by past Zoning Commissioner's is helpful. Two such cases were presented for my review and examination, namely, In Re: Marris B. Langford, et al., Case No. 85-321-SPH, and In Re: Walter Windsor, Case No. 85-326-XSPH. I have reviewed both cases thoroughly. Well reasoned and comprehensive opinions were offered in both instances by then Zoning Commissioner Arnold Jablon. In both cases, the Petitioner owned a commercial property and an

adjacent residential tract. In Windsor, the Petitioner desired placement of a storm water management pond of a D.R. 3.5 zoned property to serve an adjacent R.O. tract. In Langford, the Petitioner proposed to construct a Class C office building on an O-1 parcel with the storm water management pond serving said building on the D.R. 2 zoned portion of the site. In both instances, Commissioner Jablon approved the proposed use. He determined that the proposed use was proper as an accessory use. Mr. Jones urges that I adopt the same course in this case.

Accessory uses are defined in Section 101 of the B.C.Z.R. Therein, the term is defined as "A use or structure which: a) is customarily
incident, subordinate to and serves a principal use and structure; b) is
subordinate in area, extent or purpose to the principal use or structure;
c) is located on the same lot as the principal use or structure served;
and, d) contributes to the comfort, convenience and necessity of occupants,
business or industry in the principal use or structure served." Clearly,
the proposed septic system complies with subsections (a), (b) and (d) of
the definition. That is, the septic system is there only to serve the
commercial use on the Jones' tract, is subordinate to same, and contributes
to the comfort, convenience and necessity of the business located thereon.
The problem for Mr. Jones is whether the use complies with subsection (c)
which requires that same be located on the same lot.

I considered a similar issue in a prior zoning case entitled In Re: Helix Health System, Case No. 92-186-SPH. Therein, I considered whether two hospitals located at opposite ends of the County, could share an incinerator located on one of the hospital's campuses. I concluded that said incinerator use, although accessory to the hospital on whose property the incinerator was located, could not be used as an accessory use to the

other hospital. That is, in that the incinerator was not located on the same lot as the principal use or structure served, it could not be accessory thereto.

The same logic must be applied here. The Jones' property is clearly defined on the site plan submitted at the hearing and contained in the metes and bounds description thereof. The septic system is not located within that lot, but is located off-site. Thus, it cannot be an accessory use or structure under the plain meaning of the words set forth in the definition.

The property owner attempts to save this argument by noting the easement acquired by Mr. Jones in May, 1992. He argues that this easement, in effect, makes the adjacent strip of land owned by Executive Auto Paint and Repair, Inc. part and parcel of the same lot owned by Mr. Jones. Without delving into the nature of easements at length, I must conclude that the property owner's position here is erroneous. A lot of record is likewise defined in the B.C.Z.R. as "a parcel of land with boundaries as recorded in the Land Records of Baltimore County..." Although Mr Jones has an easement in his neighbor's property, he does not own same in fee. The easement allows him only to use a portion of the property for a permitted purpose. It does not convey title. It does not make that portion of the property conveyed the same lot as Mr. Jones' tract. Thus, for all of these reasons, the use is not accessory.

4) ARE BALTIMORE COUNTY AND/OR THE PETITIONERS ESTOPPED FROM ENFORCING A PROHIBITION OF THE USE?

I have concluded that the case is properly before me as Zoning Commissioner pursuant to the broad authority set forth in Section 500.7 of the B.C.Z.R. I have likewise concluded that the septic system is in fact

a use of the Executive Auto Paint and Repair, Inc. parcel. Further, it is not permitted as of right in the R.C. 2 zone, not allowed by special exception, does not fall within any of the definitions of such permitted or special exception uses in the B.C.Z.R., and is not accessory to the Jones' property. For all of these reasons, the proposed septic system is illegal. However, can the Petitioners or Baltimore County force a termination of the use of the system? The answer must be no.

As the rescitation of the facts above makes clear, the septic system alternative proposed for the adjacent tract was not Mr. Jones' first choice in regard to development of his property. He originally proposed a septic system within the four corners of the Long Green Hotel site. Only when this sytem was not workable and public utilities were not available did Mr. Jones look elsewhere. Further, there has clearly been extensive governmental review of the propriety of Mr. Jones' suggested alternative. The record of the case is clear that extensive governmental reviews were undertaken before the project was approved. Further, it is clear the Petitioners were aware of this activity. The record contains copies of correspondence by and between DEPRM and the Long Green Valley Association. Despite these reviews and concerns, however, it was not until September 1992 that the instant Petition was filed. This was well after Mr. Jones had spent a significant sum to acquire an easement on the Executive Auto Paint and Repair, Inc. property and constructed the septic system. In fact, the system has now been completed and the property is being used for commercial purposes. Although I have jurisdiction to consider the issues presented, equitable estoppel prohibits the Petitioners and the County's The doctrine of an equitable insistence that this use be terminated. estoppel has been defined as "...the effect of the voluntary conduct of matable market

-the party whereby he is absolutely procluded, both at law and in equity, from asserting rights which might have otherwise existed, either of propercontract or remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, contract or remedy." Salisbury Beauty Schools v. State 268 Md. 32, 300 A2d 367 (1973). "Equitable estoppel operates to Board, prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so." Fitch v. Double Sales Corp., 212 Md. 324, 129 A2d 93 (1957). There is no settled rule as to when equitable estoppel should be applied. However, it can be applied against | municipalities. See Kent Co. Planning Inspector v. Abel, 246 Md. 395, 228 A2d. 247 (1967).

As noted above, the facts presented in the record of this case are clear regarding the ongoing review and ultimate approval of the proposed septic system by Baltimore County. The knowledge of the Petitioners in this process are also clear. Despite this knowledge and participation, neither Baltimore County nor the Petitioners objected. No Petition for Special Hearing was filed until well after the fact. There must be some sense of fundamental fairness in the interpretation and enforcement of the B.C.Z.R. Property owners in Baltimore County must be assured that if they openly consult with their neighbors and undergo the scrutiny of the State and local review process, that their actions will be upheld as permissible. Therefore, notwithstanding my conclusion that the proposed use (actually implemented use) is illegal, I cannot in good conscience penalize Mr. Jones

based upon the facts and record presented. Thus, the Petition for Special Hearing must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of August, 1993 that approval should be given to the use of adjoining property zoned R.C. 2 and owned by Executive Auto and Paint Repair, Inc. to support a waste disposal system for the subject commercial property, known as 13523 Long Green Pike, zoned B.L.-C.R., in accordance with Jones' Exhibit 5, and as such, the Petition for Special Hearing is hereby DENIED.

LAWRENCE E. SCHMIDT Zoning Commissioner

for Baltimore County

LES:bjs

CSA/PHC Form No. 2

IN THE COURT OF SPECIAL APPEALS

FRIENDS OF THE RIDGE et al.

* PHC No. 1187

* September Term, 1996

BALTIMORE GAS AND ELECTRIC COMPANY

vs.

ORDER

The Court of Special Appeals, pursuant to Maryland Rule 8-206(a)(1), orders and directs that the above captioned appeal proceed without a Prehearing Conference.

BY THE COURT

JAMES R. EYLER, JUDGE

Date: February 27, 1997

cc:* Hon. Suzanne Mensh, Clerk
Circuit Court for Baltimore County
J. Carroll Holzer, Esquire
Robert Hoffman, Esquire
Janet McHugh, Esquire
C. Carey Deeley, Jr., Esquire
Kathleen G. Cox, Esquire
Patricia A. Malone, Esquire

*Mr./Ms. Clerk: Will you kindly place this Order with the record in this cause (Your 95 CV 5315). The date of this Order establishes commencement of the 10 day period under Md. Rule 8-411(b) and the 60 day period for transmittal of the record under Md. Rule 8-412(a).

Exh. C

FRIENDS OF THE RIDGE

PRIENDS OF THE RIDGE 1 Joel Court Reisterstown, Maryland 21136

(410) 252-6122 · Fax (410) 889-8489

"Never doubt that a small group of thoughtful committed citizens can change the world: indeed, it is the only thing that ever has".

Margaret Mead

February 1, 1996

The Honorable Frank Cicone Baltimore County Circuit Court 401 Bosley Avenue Settlement Court, Room 507 Towson, MD. 21204

Dear Judge Cicone:

As requested enclosed is the Friends of the Ridge's "bottom line" on the issues that have been discussed in your court.

We wish to preface this by stating that the "list" you have been referring to was originally intended as a starting point for our negotiations, rather than an inclusive list of all pertinent issues.

Exh. D

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Friends of the Ridge would like to take this opportunity to thank you for your time and patience in this proceeding.

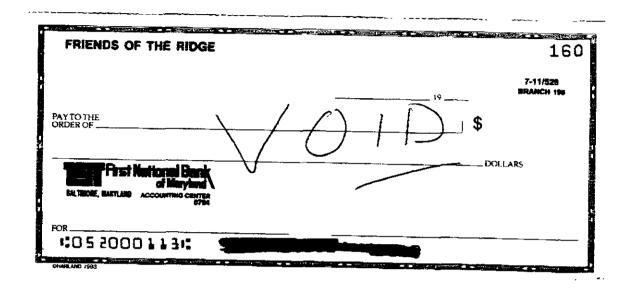
Sincerely,

Friends of the Ridge

ZAT	Roumany Hanley
Ronald Hanley	Rosemary Hanley
Robert O'Hara	Mary O'Hara
Carl Lollo	Lamela Fracto
Carl Follo	Pameja Folio
Robert Rytter	Carol Rytter
	Cynthein Brown
Ira Brown	Cynthia Brown (Legal of H. Lacon Sorp
Dieter Langendorf	Elizabeth Langendorf

My	Darla Lansnen
Andrew Lansman	Darla Lansman
Jeffire Bores	Diane Bozel Olivina Diane Bozel
_ h/n Chul rechy	Christine Pitcher
Bruce Pitcher	Christine Pitcher
Joseph Market	Jame Cinstoruski
Joseph Czajkowski	Anne Czajkowski
TO 1950	Losdey Script- Ho
Nigel Howse	Leslie Howse

cc: Carroll Holzer, Esq. Holzer & Lee Rob Hoffman, Esq. Venable, Baetcher & Howard Janet McHugh, Esq. Baltimore Gas & Electric





UNINCORPORATE NON-BUSINESS ASSOCIATION

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RECORD AS OF 09/01/96

FRIENDS OF THE RIDGE FINANCIAL-BG&E

INCOME

1. PETITIONERS

jeff & Diane Bozel	06/01/96			
Ira & Cynthia Brown	08/01/96			
Joe & Joanne Czajkowski	05/01/96			
Carl & Pam Folio	08/01/96			
Ron & Rosemary Hanley	08/01/96			
Nigel & Leslie Howse	09/30/95			
Dieter & Elizabeth Langendorf	08/01/95			
Andrew & Darla Lansman	08/01/96			
Bob & Mary O'Hara	08/01/96			
Bruce & Christine Pitcher	04/01/96			
Bob & Carol Rytter	03/01/96			

SUBTOTAL

BG&E - ACCOUNT STATEMENT

Carl & Pam Follo 1 Joel Court Reisterstown, Maryland 21136 561-9319

Date	Amount Billed	Amount Received	Balance Due
12/01/95	s .		
01/01/96	\$		
02/01/96	\$		
03/01/96	\$		
03/29/96			
04/01/06	<u>\$</u>		
05/01/96	<u>\$</u>		
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Please make checks payable to: Friends of the Ridge

Deliver Payments to:

Ira Brown 5 Joel Court 252-5401

First Financial Report

A Statement of Your Accounts with First National Bank



Indication to the RIDGE

FRIENDS OF THE RIDGE

1 JOEL COURT

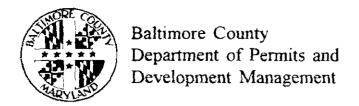
REISTERSTOWN, MD 21136-5643

SEP 18, 1996 PAGE 1 STMT ID #0205-94200205103 CHECKING ACCOUNT #529-2345-6

FOR INFORMATION ABOUT ACCOUNT BALANCES, DEPOSITS, WITHDRAWALS AND CHECKS RECEIVED FOR PAYMENT, PHONEFIRST IS AVAILABLE 24 HOURS A DAY. DALL 244-4300 (BALTIMORE AREA) OR 1-800-533-4630. FOR OTHER ASSISTANCE, PLEASE CALL A CUSTOMER SERVICE REPRESENTATIVE ON (410) 539-6866, OR 1-800-441-8455, BETWEEN THE HOURS OF 8 AM AND 8 PM MONDAY THROUGH FRIDAY, AND BETWEEN 9 AM AND 2 PM ON SATURDAY.

9533

YOUR FIRST FINANCIAL SUITIARY	LIQUID ASSET ACCOUNTS		BALANCE	CREDIT AND LOAN ACCOUNTS	BALANCE
	PERSONAL CHECKING	\$		TOTAL	\$
	TOTAL	\$		MORTGAGE ACCOUNT	\$ -
	INVESTMENT ASSET ACCOUNTS			4	 _
	TOTAL	\$			
YOUR FIRST FINANCIAL PROFILE	ASSET ACCOUNTS			CREDIT AND LOAN ACCOUNTS	
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	INTEREST POSTED THIS YEAR	\$		FIRSTLINE CREDIT LIMIT	\$ _
				AVAILABLE FIRSTLINE CREDIT	\$



Director's Office County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 (410) 887-3353 Fax (410) 887-5708

October 29, 1996

Mr. Carl Follo Friends of the Ridge 1 Joel Court Reisterstown, MD 21136

> RE: BGE 1821 Ridge Road 8th Election District

Dear Mr. Follo:

I am in receipt of your request for information regarding the construction BGE has undertaken on Ridge Road. In fact, BGE is using 1821 Ridge Road as a storage/staging area for the placement of underground cable.

After receipt of a complaint, Gary Bennett, a code enforcement inspector, made a site visit and, as a result, had occasion to take photographs of the property in question for review. At the time of Mr. Bennett's site inspection, it was determined that the on-site contractor would remove his equipment, the portable toilet, and the majority of the dirt stored on the site within several days of the inspection. The largest dirt pile actually has been there since the circuit court signed the order for injunctive relief.

Mr. Bennett, in discussion with Mrs. Folio, stated that R.C. 5 zoning, which the site in issue is zoned, does not permit a contractor's equipment storage yard and that he would further research the issue. Mr. Bennett did speak with Mrs. Folio twice and provided her with a copy of the use permit issued by the Department of Permits and Development Management. The temporary use permit was issued at the request of BGE, because it was determined that the site, while being used for storage, was a temporary and accessory station for utilization while the underground cable was installed. Section 1A04.2.A.9 of the Baltimore County Zoning Regulations (BCZR) provides that "[t]elephone, telegraph, electrical-power, or other similar lines or cables — all underground; underground gas, water, or sewer mains or storm drains; other underground conduits except underground interstate and intercontinental pipe lines" are permitted as of right in R.C. 5 zoned land. The use of this property was accessory to the permitted principal use. Inasmuch as the use is temporary and there is no way for the work to be done without it, a temporary permit was issued.

liht

Mr. Carl Follo October 29, 1996 Page 2

Mr. Bennett was told by Mrs. Folio that she was the neighborhood spokesperson, but he also spoke with others in the community. Your statement that he did not return phone calls is inaccurate and not supported by the facts. Mr. Bennett held a follow-up meeting with representatives of BGE to insure that the use of this property would be temporary. He talked with the BGE employees who were working on the site and the contractor and then, accompanied by the BGE representative, went to a neighbor's home where the representative agreed to supply additional trees to screen the neighbor's view

You pose a number of questions, some of which I have answered above, and I will attempt to address the others as follows:

- 1. The use permit, as stated above, allows the property to be used as a temporary material storage area. A stockpile permit could have been issued as well, which is a permit specifically permitted by the building code for such a use. This type of permit is valid for two years, but BGE intends to be out as quickly as it can. Based upon the type of work being done and the short period of time needed to complete the job, a temporary use permit was requested by BGE.
- 2. If not defined in the zoning regulations, a word or term is defined by using Webster's <u>Third New International Dictionary</u>, as required by the zoning regulations.
- 3. The use of a portable toilet is not prohibited by any order, code, or law, indeed, the plumbing code requires toilet facilities for workers in remote locations.
- 4. There is no legal requirement that a use permit be posted. The authority for the use permit is contained in Section 500.4, BCZR, and no posting is required.
- 5. The use permit fee is \$40.00.
- 6. An analogy can be drawn to the construction of a new home. When a dwelling is under construction, the site becomes the natural staging area for the construction of the home and the excavation for its foundation, because materials must be delivered and displaced earth and building materials stockpiled temporarily until the dwelling is completed. The building code provides for such use by the creation of the stockpiling permit. As noted above, such a permit has a two-year life. This use permit was issued because it was determined to be appropriate under the particular facts and circumstances. I must note that this is not an unusual or atypical situation. It is very common, and it was handled in no way differently than the others.

Mr Carl Follo October 29, 1996 Page 3

I recognize the emotion attached to this project and the community's concerns engendered by BGE's decision to construct the substation. I must, however, accept the professional judgment of those who investigated the property, which included Mr. Bennett and his supervisors, and who concluded that no enforcement action should ensue. At best, I hope that I have addressed the issues you present; at the very least, I hope that you understand, if not agree with, the rationale for the action taken.

Sincerely,

Arnold Jablon

AJ/jm

c: The Honorable C.A. Dutch Ruppersberger



Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

September 18, 1995

J. Carroll Holzer, Esquire 305 Washington Avenue Suite 502 Towson, MD 21204

RE: Preliminary Petition Review (Item #114)
Legal Owner: Baltimore Gas & Electric Co.
Petitioner: Friends of the Ridge
8th Election District

Dear Mr. Holzer:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed unaddressed zoning issues and/or incomplete information. The following comments are <u>advisory</u> and do not necessarily identify all details and inherent technical zoning requirements necessary for a complete application. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

- The plans and descriptions are not sealed.
- The plans and descriptions do not match in area or metes and bounds. The plan shows 2.8923 acres, while the description shows 79.457 acres.

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

Very trially yours

John L. Lewis Planner II

Zoning Review

Enclosure (receipt)

c: Zoning Commissioner

Exh. J

IN THE MATTER OF SHERMAN BUILDERS 3512 Clover Avenue Landsdowne, MD 21227

RE: ISSUANCE OF BUILDING PERMIT NO.B226389 * BEFORE THE

* COUNTY BOARD OF APPEALS

* OF BALTIMORE COUNTY

CASE NO. CBA-95-162

RULING ON MOTION TO DISMISS

The Board met September 19, 1995 to hear argument on a Motion to Dismiss filed by Sherman Builders, Inc., Appellee, and an Answer thereto filed by Ms. Patricia Bealefeld, Appellant, in reference to the above captioned matter. Debra C. Dopkin, Esquire, presented oral argument on behalf of Appellees motion; Patricia Bealefeld appeared in proper person.

A review of the record indicates that building permit No. B226389 for construction of a single family dwelling located at 3512 Clover Avenue was issued by the Buildings Engineer of Baltimore County on March 1, 1995. The project was in complete conformance with the Baltimore County Zoning Regulations (BCZR), as determined by the reviewing agencies. On March 24, 1995, a stop work order suspended said permit. A Petition for Variance was filed on behalf of the Appellees relative to the front yard setback of the subject property.

A hearing was held before Timothy M. Kotroco, Deputy Zoning Commissioner for Baltimore County, at which time counsel for the property owner withdrew the request for variance, noting that the plans for the proposed dwelling then reflected setbacks that were in compliance with the RCZR. Insumuch as a variance was no larger necessary, no further testimony was taken and the Deputy Zoning Commissioner issued an order dated July 19, 1995 dismissing the Petition for Variance as moot. Appellant, a resident in the

Exh. K

proximate area of the subject property, then noted an appeal of the peputy Zoning Commissioner's action on July 24, 1995.

A review of the statutes reveals that under Section 7-36(a) of the Baltimore County Code (BCC), the Buildings Engineer of Baltimore County is the only official authorized to issue building permits, and pursuant to Section 7-2(a) BCC has the authority to supervise activities relative to a building permit. More specifically, under Section 7-36(a)(3) BCC only the Buildings Engineer is granted the authority to "revoke, suspend, annul, or modify any (building) permit". Under Section 7-36(a)(4) BCC an appeal to the Board of Appeals "for review of action of the Buildings Engineer" may be taken by the "applicant" for a building permit "within thirty (30) days and not longer" and "Applicant" is defined in Section 7-36(a)(3) BCC as "any person who is the owner, contract purchaser or the legally authorized representative of either requesting approval of the aforementioned permit".

Service, Inc., et al vs. People's Counsel for Baltimore County, Maryland et al 336 MD 569(1994), in which the Maryland Court of Appeals has held that this Board's limit of authority and jurisdiction exists in those appeals which are brought as a result of final decisions such as those taken on the part of the Buildings Engineer in the Issuance, renewal, revocation, suspension, annulment or modification of any building permit.

In the instant case, we find, that although Mrs. Bealefold is a resident in the area of the subject property, she is not an "applicant" as defined in Section 7-36(a)(3) BCC. As a result, he has no legal "standing" relative to the permit itself and cannot

pursue an appeal arising therefrom. Further, even assuming arguendo that Appellants cause was not defeated by her lack of "standing", we find that pursuant to the decision in <u>UPS id.</u>, the appealable event herein was the issuance of the original building permit dated March 1, 1995. Therefore the period in which to file an appeal would have begun on March 1, 1995 and expired on March 31, 1995. Accordingly, the appeal filed by Mrs. Bealefeld was not timely. Based upon the above, we must grant the Appellee's Motion to Dismiss.

ORDER

IT IS THEREFORE, this 14th day of November, 1995 by the County Board of Appeals of Baltimore County

ORDERED that the Motion to Dismiss filed by the Appellee in the above matter be and the same is hereby GRANTED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Robert O. Schuetz, Chairma

Lawrence M. Stah

Margaret Worsall

IN THE MATTER OF
DAVIS PROPERTY
1811 RUXTON ROAD
BALTIMORE, MD 21204
(Property of Richard W. [

RE: ISSUANCE OF BUILDING

NO.186234

CASE NO. CBA-94-176

RULING ON MOTION TO DISMISS

This case comes before this Board on appeal of the approval of Building Permit No. B186234.

Memorandum in Support of Motion to Dismiss the appeal was filed by Richard W. Davis, owner, through his attorneys, Deborah C. Dopkin and Rosolio, Silverman and Kotz, P.A.

Memorandum in Support of Appeal from Defective, Amended, Building Permit No. B136234 was filed by Mr. and Mrs. Carl Schmidt through their attorneys, Newton A. Williams and Nolan, Plumhoff & Williams.

The Board studied these lengthy memorandums and on January 25, 1995, publicly deliberated the issues and reached a decision that the appeals would be dismissed.

In this case, several important questions present themselves. These questions highlight some of the problems with Baltimore County's system and laws as they are written. The Board is bound to abide by the law. In this case there are two primary issues: one issue being the standing or the lack thereof in this case, and the other being the timeliness of the appeal. These issues can be discussed separately and exclusive each of the other. If the Board finds that the appeal was not timely filed then the issue of standing is most. If, however, the Board goes the other way and finds there is no standing then timeliness need not be addressed. In this deliberation, the Board will go with the issue of standing.

As far as standing goes, the Board believes it has its hands tied and is inclined to dismiss appeals based on lack of standing. Section 7-36(a) of the Baltimore County Code does not expressly give anyone other than the Applicant a right to appeal the final action taken by the Buildings Engineer. In reading the Code, and reading other provisions of the Code, reading the memos, there are reasons that are consistent with a decision to dismiss. When building permits are issued, there is no provision in the law to give notice to the public; that supports the legislative philosophy regarding non-applicant standing. Also, there are Circuit Court remedies if the permit is improperly or unlawfully issued.

For the above noted reasons, the Board will rule to Dismiss the appeals taken in this case and will not address the issues of timeliness or when the action became final and will rule these issues as being dismissed.

ORDER

IT IS THEREFORE, this ________, 1995 by
the County Board of Appeals of Baltimore County

ORDERED that the Motion to Dismiss the appeals which were taken by the appellants/protostants be and the same is GRANTED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William T. Hackett, Chairman

Audson H. Lipowitz

S. Diane Levero

CORPORATE AFFAIRS

Baltimore Gas and Electric Company P.O. Box 1475 Baltimore, Maryland 21203-1475



November 10, 1994

Dear Neighbor:

This letter is intended as an update on BGE's efforts to expand the Ivy Hill Substation and to provide the Falls Road corridor with reliable service.

BGE was granted zoning to expand the station in June of 1994. This was appealed in July by a group of 11 families calling themselves Friends of the Ridge. Hearings began on October 4 and 6. They will resume in January 1995 - (This is the first available block of time that the Appeals Board had on their calendar).

Since we last corresponded with you, we have attempted to meet with this new organization to begin a dialogue to perhaps reach some sort of compromise. We have been unsuccessful in these attempts.

We <u>have met</u> with the Falls Road Community Association, the Chestnut Ridge Community Association, Congresswoman Helen Bentley's staff and Councilman C.A. "Dutch" Ruppersberger.

Listed below are the results of those meetings:

- 1. The Falls Road Community Association's Board voted "to recommend to the Board of Appeals that they <u>support</u> BGE's need to build Phase I of this project, but recommend eliminating Phase II.
- 2. The Chestnut Ridge Community Association's Board voted that there "was not sufficient evidence to oppose expansion of this substation". They <u>support</u> the need for reliable service.
- Congresswoman Bentley's staff offered to help mediate this issue. BGE <u>accepted</u> this
 offer. Friends of the Ridge rejected it.
- 4. Councilman C.A. "Dutch" Ruppersberger offered to meet with Friends of the Ridge. They cancelled the meeting.
- 5. As late as October 13, the Falls Road Community Association offered to mediate. BGE <u>accepted</u> Friends of the Ridge rejected it.

To help set the record straight on misinformation that has been distributed by the Friends of the Ridge, we have provided this letter and a fact sheet on the station. If you would like more information or a presentation to your community organization, or group of neighbors, please contact me at 234-6543.

Sincerely,

Clare C. Miller

(Thiller

EXH M

PETITION OF FRIENDS OF
THE RIDGE FOR A SPECIAL
HEARING FOR PROPERTY
LOCATED AT THE
SOUTHWEST CORNER OF
INTERSECTION OF RIDGE
ROAD AND JOEL COURT

8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

- * BEFORE THE
- * ZONING
- * COMMISSIONER
- * OF BALTIMORE COUNTY
- * Case No.: 96-117-SPH

*

* * * * * * * *

MOTION FOR DETERMINATION OF ZONING COMMISSIONER'S JURISDICTION TO HEAR PETITION FOR SPECIAL HEARING

Baltimore Gas and Electric Company ("BGE"), Respondent, by Robert A.

Hoffman with Venable, Baetjer and Howard, LLP, its attorney, files this Motion for a

Determination of the Zoning Commissioner's Jurisdiction to Hear the Petition for Special

Hearing filed by Friends of the Ridge, as follows:

1. On September 8, 1995, Friends of the Ridge, Petitioner, filed a Petition for Special Hearing, pursuant to Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations, asking that the Zoning Commissioner for Baltimore County determine "whether BGE's construction plans for [the Ivy Hill Substation] are inconsistent with and in violation of the approved Special Exception" granted by the County Board of Appeals for Baltimore County in Case No. 94-452-XA. In its Petition, Petitioner asserts that the construction plans for the substation (*i.e.*, building permit plans) are inconsistent with the

approved special exception with regard to the following: (1) the height of the structures and equipment to be built; (2) the number of structures and equipment to be built; (3) an additional roadbed to be laid; and (4) the existence of posts and a trailer with mobile transfer.

- 2. BGE, first, would like to point out that the Petition for Special Hearing was filed by an entity identified only as "Friends of the Ridge," which is not identified as a corporation, partnership, or association. BGE contends that this entity, which does not own the property in question or any property in the vicinity of the Ivy Hill property, has no standing to file this petition.
- 3. Second, it is BGE's position that Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations do not vest the Zoning Commissioner with jurisdiction to consider and rule upon the instant Petition for Special Hearing. Section 500.6, in pertinent part, states:

[T]he zoning commissioner shall have the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or non-compliance with any zoning regulations, or the proper interpretation thereof, and to pass his order thereon, subject to the right of appeal to the Board of Zoning Appeals as hereinafter provided.

A plain reading of the language in Section 500.6 indicates that relief under this section is available only to the Zoning Commissioner when a property owner is in violation of or in non-compliance with the zoning regulations. At this time, however, BGE is neither in

violation of nor is in non-compliance with any zoning regulation. Nor has the Zoning Commissioner sought this hearing "upon notice to the parties in interest."

In fact, Petitioner does not actually even allege that BGE is in violation of or in non-compliance with the zoning regulations. Rather, Petitioner contends that BGE may, in fact, attempt to construct the Ivy Hill Substation in a manner not permitted by the special exception approved for the substation. Section 500.6, however, clearly does not grant the Zoning Commissioner the power to conduct a hearing involving a prospective violation of the zoning regulations. Instead, this section permits the Zoning Commissioner only to conduct hearings when a present violation of the zoning regulations is alleged. Consequently, although Petitioner asserts that its Petition for Special Hearing is filed pursuant to Section 500.6, this section does not provide the Zoning Commissioner with jurisdiction to hear the petition.

4. Additionally, it would be equally improper for the Zoning Commissioner to hear the Petition for Special Hearing pursuant to Section 500.7. From the plain language of Section 500.7, it is apparent that this section was intended to provide persons with a present or prospective ownership interest in property with an avenue for obtaining an advisory opinion from the Zoning Commissioner regarding the acceptable uses of their own property. Petitioner, not an owner of the property, is attempting, however, to use Section 500.7 as a tool to re-litigate BGE's right to construct the already approved substation on BGE's own property. Because Section 500.7 does not grant the Zoning

Commissioner the authority to conduct a hearing for such purposes, the Zoning Commissioner must refrain from considering the Petition for Special Hearing.

5. Petitioner, though, is not left without a remedy as there are, at least, two procedures that are or were available to Petitioner. The first procedure available to Petitioner was an appeal from the issuance of the allegedly improper building permits. Under Section 602 of the Baltimore County Code, Charter, the County Board of Appeals has jurisdiction over appeals from orders relating to building. Petitioner, however, failed to avail itself of this remedy and is now precluded from doing so by its delay. Petitioner should not be given a second bite at the apple with respect to issues that should have been raised in a timely appeal.

The second procedure available to Petitioner in the event of a zoning violation is contained in Section 26-120 of the Baltimore County Code. Under this section, any person affected by a zoning violation can maintain an action in the appropriate court for an injunction of the violation. Although premature, Petitioner did file for an injunction before the Circuit Court for Baltimore County and before the Court of Special Appeals. Included in Petitioner's argument on the injunction before both the Circuit Court and Court of Special Appeals was the very issue it now seeks to have the Zoning Commissioner decide - whether the construction plans/permits are inconsistent with the special exception plan for the substation.

6. Therefore, even if the Zoning Commissioner believes that he has jurisdiction to consider the Petition for Special Hearing, the law of the case, nevertheless,

compels a finding in BGE's favor. After five days of testimony, the Board of Appeals approved BGE's Petition for Special Exception for the Ivy Hill Substation. On appeal, the grant of the special exception was affirmed by the Circuit Court for Baltimore County. This case is now pending before the Court of Special Appeals, which has rejected Petitioner's attempt to enjoin the construction of the substation pending the appeal. Petitioner, with little camouflage, is actually trying to re-litigate the issues decided earlier by the Board of Appeals and the Maryland Courts. The Zoning Commissioner, however, is bound by the decisions of the Board of Appeals and the Maryland Courts that have considered the validity of the special exception and have consistently ruled in favor of BGE's right to construct the substation.

WHEREFORE, for the above-stated reasons, Respondent Baltimore Gas and Electric Company respectfully requests that the Zoning Commissioner for Baltimore County:

- (1) establish that the March 20, 1997, hearing will be for the sole purpose of determining whether the Zoning Commissioner has jurisdiction to hear the Petition for Special Hearing under Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations; and,
- (2) find that Petitioner Friends of the Ridge has no standing to file this Petition for Special Hearing; that the Zoning Commissioner does not have jurisdiction to consider

In Maryland, a decision which finally disposes of a matter is the law of the case in subsequent proceedings. Ralkey v. Minnesota Mining & Manu. Co., 63 Md. App. 515, 521, 492 A.2d 1358 (1985). A court presiding over a subsequent proceeding should not act inconsistently with the prior decision. Hawes v. Liberty Homes, Inc., 100 Md. App. 222, 230, 640 A.2d 743 (1994).

the Petition for Special Hearing under Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations; that the Zoning Commissioner is bound by the prior decisions of the County Board of Appeals, Circuit Court for Baltimore County, and Court of Special Appeals of Maryland with regard to use of the property for purposes of a substation; and that there will be no hearing on the merits of the Petition for Special Hearing.

Respectfully submitted,

ROBERT A. HOFFMAN

Venable, Baetjer and Howard, LLP

210 Allegheny Avenue

P. O. Box 5517

Towson, Maryland 21285-5517

(410) 494-6200

Attorney for Respondent Baltimore

Gas and Electric Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day of March, 1997, a copy of the foregoing MOTION FOR DETERMINATION OF ZONING COMMISSIONER'S JURISDICTION TO HEAR PETITION FOR SPECIAL HEARING was mailed to J. Carroll Holzer, P.A., 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Petitioner Friends of the Ridge.

ROBERT A. HOFFMAN

TO1DOCS1/DPM01/0040108.01



210 Allegheny Avenue Post Office Box 5517 Towson, Maryland 21285-5517 (410) 494-6200, Fax (410) 821-0147 3/15/19 50 pl

OFFICES IN

MARYLAND WASHINGTON, D C VIRGINIA

97-1149

Robert A. Hoffman (410) 494-6262



March 14, 1997

HAND-DELIVERED

Mr. Arnold Jablon, Director Department of Permits and Development Management County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

Re:

Case No.: 96-117-SPH

Friends of the Ridge v. BGE

Dear Mr. Jablon:

With this letter, I am enclosing for filing Baltimore Gas and Electric Company's Motion for Determination of Zoning Commissioner's Jurisdiction to Hear Petition for Special Hearing relating to the hearing currently scheduled in this case for March 20, 1997.

Very truly yours,

Robert A. Hoffman

RAH:dk

cc:

J. Carroll Holzer, Esquire Janet E. McHugh, Esquire

TO1DOCS1/PAM01/0040628.01



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

Southwest Corner at Intersection for the property located at of Ridge Rd. and Joel Court

I/we do solemnly declare and affirm, under the penalties of perjury, that I/we are

96-117-5PH

which is presently zoned RC 5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, adjacent property owners to the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 and/or 500.6 of the Zoning Regulations of Baltimore County.

(See Supplemental Sheet)

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

	the legal owner(s) of the property which is the subject of this Petition.
Petitioners:	Legal Owner(s):
Friends of the Ridge	Balto. Gas and Electric Co.
(Type or Print Name)	(Type or Print Name)
Signature 305 Washington Ave. #502	Signature
Address Towson, MD 21204	(Type or Print Name)
City State Zipcode	Signature P.O. Box 1475
Attorney for Petitioner:	Address Phone No.
J. Carroll Holzer	Baltimore, MD 21203
(Type or Print Name)	City State Zipcode Name, Address, and phone number of legal owner, contract purchaser or representative to be contacted.
Signature	Name
305 Washington Ave. #502	
Address Phone No.	Address Phone No.
Towson, MD 21204 825-6961	
City State Zipcode	OFFICE USE ONLY
DROP- OFF	ESTIMATED LENGTH OF HEARING unavailable for Hearing
NO REVIEW	The following dates Next Two Months ALL OTHER REVIEWED BY: DATE
Robertition CDLI L.CD 010 05	

SIGNATURES (NONE)

PETITION FOR SPECIAL HEARING

96-117-5PH

SUPPLEMENTAL SHEET

At the Hearing, the Zoning Commissioner should determine whether BGE's construction plans for the subject site (Exh. 2 attached) are inconsistent and in violation of the approved Special Exception by the County Board of Appeals in Case No. 94-452-XA (Exh. 1 attached) in the following respects:

- A. Height of structures and equipment
- B. Number of structures and equipment
- C. Additional Roadbed
- D. Posts and trailer with mobile transformer

Items A through D are reflected in attached Exhibits 2,3 and 4.

Petitioners' Exhibit 5, attached hereto, reflect relevant testimony before the CBA. Petitioners' Exhibit 6, attached hereto, is the property description submitted to the CBA by BGE in case No. 94-452-XA. And Exhibit 7 is a computer printout of permit No. B237372 for the construction of 11 foundations for substation addition. The forgoing is filed pursuant to 500.6 and 500.7 of the Baltimore County Zoning Regulations.

ADDENDUM I

96-117-5PH

EXHIBIT #1

Petitioner's Exhibit #2

Plat to Accompany Petition for Zoning

Special Exception and Variances

EXHIBIT #2

BGE'S Building Permit Plan

EXHIBIT #3

BGE's Building Permit Plan with Overlay #1

-Shows Original Paved (macadam) Entrance

to Property, Proposed Park and Turn Area

& Bar Graph Showing Original Number and Size of Structures (shown on Petitioner's Exhibit #2) in black and Revised Number and Size of Structures

(Shown on BGE's Building Permit Plan) in red

EXHIBIT #4

BGE's Building Permit Plan with Overlay #2

-Shows New Road Base and New Use, Specifically Garaging a Mobile Transformer on a 45' x 10' Trailer (estimated size based on dimensions of Building

Permit Plan)

EXHIBIT #5

Testimony: Monica McGrady-BCBA-October 1994

Equipment identification, number and size

pp. 27 - 31

Monica McGrady -BCBA-October 1994

Spacing of Equipment p.39

Monica McGrady-BCBA-October 1994

Traffic at the Site after Construction p.40

Monica McGrady-BCBA-October 1994

Entrance and Driveway pp. 59-60

Monica McGrady-BCBA-October 1994

Heights of Structures and Compatibility

Cross Examination pp. 63-66

Monica McGrady-BCBA-October 1994

Traffic - Cross Examination p. 90

ONDER RECEIVED FOR FILMS

BCBA's Opinion: Traffic and Congestion p.7 96-117-SPH

Electrical Utility Structures Construed as a Principal Building p. 10

EXHIBIT #6 BGE Official Description of Ivy Hill Property

LEGAL DESCRIPTION FOX RIDGE ESTATES 96-117-SPH

ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being known as Fox Ridge Estates as shown on Subdivision Plan dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said tract being more particularly described as follows:

BEGINNING at a point at the intersection of the centerlines of Falls Road and Ridge Road. Thence along and within the right-of-way of Falls Road the following seven (7) courses and distances: (1) South 08 degrees 39 minutes 52 seconds East, a distance of 100.93 feet to a point for corner; (2) South 36 degrees 13 minutes 42 seconds East, a distance of 1372.94 feet to a point for corner; (3) South 37 degrees 11 minutes 10 seconds East, a distance of 121.29 feet to a point for corner; (4) South 53 degrees 29 minutes 18 seconds West, a distance of 49.05 feet to a point for corner; (5) South 33 degrees 16 minutes 19 seconds East, a distance of 410.74 feet to a point for corner; (6) Along a curve to the left, said curve having a radius of 2506.48 feet, an arc length of 31.33 feet, a chord bearing of South 32 degrees 54 minutes 52 seconds East, and a chord distance of 31.33 feet to a point for corner; (7) South 49 degrees 31 minutes 17 seconds East, a distance of 120.88 feet to a point for corner. Said point being on the most northerly corner of a tract of land now or formerly owned by Bahram Sina as described in deed recorded among the Land Records of Baltimore County in Liber OTG 4541, Folio 164. Thence along the perimeter of said Bahram Sina tract, the following two (2) courses and distances: (1) South 77 degrees 30 minutes 52 minutes West, a distance of 852.21 feet to a point for corner; (2) South 04 degrees 30 minutes 38 seconds East, a distance of 831.05 feet to a point for corner. Said point being a northeast corner of a second tract of land now or formerly owned by Bahram Sina as described in deed recorded among the Land Records of Baltimore County in Liber EHK, Jr. 6005, Folio 466. Thence along the perimeter of said second tract of Bahram Sina, the following two (2) courses and distances: (1) North 77 degrees 58 minutes 54 seconds West, a distance of 893.19 feet to a point for corner; (2) South 86 degrees 58 minutes 08 seconds West, a distance of 435.36 feet to a point for corner. Said tract being on a easterly line of a tract of land now or formerly owned by Martha C. Thompson as described in deed to Martha C. Thompson recorded among the Land Records of Baltimore County in Liber GLB 1832, Folio 243. Thence along the perimeter of said Martha C. Thompson tract, the following two (2) courses and distances: (1) North 01 degrees 55 minutes 08 seconds East, a distance of 739.26 feet to a point for corner; (2) South 82 degrees 57 minutes 37 seconds West, a distance of 24.75 feet to a point for corner. Sald point being a easterly corner of a tract of land now or formerly owned by P. Bealefield as described in deed recorded among the Land Records of Baltimore County in Liber EHK, Jr. 6542, Folio 420. Thence along the perimeter of said P. Bealefield tract, the following two (2) courses and distances: (1) North 00 degrees 00 minutes 46 seconds East, a distance of 604.94 feet to a point for corner; (2) North 21 degrees 23 minutes 37 seconds East, a distance of 1014.07 feet to a point for corner. Said point being the most easterly corner of a tract of land now or formerly owned by BG&E, Co. as described in deed recorded among the Land Records of Baltimore County in Liber GLB 2911, Folio 289. Thence along said BG&E, Co. tract, the following two (2) courses and distances: (1) North 42 degrees 30 minutes 18 seconds West, a distance of 98.92 feet to a point for corner; (2) North 42 degrees 18 minutes 58 seconds West, a distance of 42.67 feet to a point for corner. Said point being within the right-of-way of hereinbefore mentioned Ridge Road. Thence along and within the right-of-way of said Ridge Road, the following four (4) courses and distances: (1) North 62 degrees 29 minutes 37 seconds East, a distance of 106.92 feet to a point for corner; (2) North 55 degrees 45 minutes 07 seconds East, a distance of 137.23 feet to a point for corner; (3) North 66 degrees 29 minutes East, a distance of 137.46 feet to a point for corner; (3) North 66 degrees 29 minutes East, a distance of 137.46 feet to a point for corner, (4) North 77 degrees 29 minutes 37 seconds East, a distance of 277.86 feet to the point of beginning.

CONTAINING 79.457 acres of land.

Exh. 6

May 24, 1994

NOTICE OF HEARING

The Zorling Commissioner of Ballmore County by authority of the Zorling County by authority of the Zorling Act and Regulations of Ballmore County will hold a public hearing on the property Identified herein in Form 106 of the County of the County of the Bullding, 111 W. Chesapake, Avenue in Towson, Maryland 21204 of Room 118. Old Counthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Clase: #96-117-SPH (Item 114)
Ive Hill Substation
SE/S Ridge Road, opposite Gent Road and SW of Falls Road
Bit Election District
3rd Councilmanic Legal Owner(s):
Baltimore das and Statistic Owner(s):
Baltimore das and Stat

Special Hearling to determine whiter BGE's construction plans for the subject site are inconsistent and in violation of the paper of the county Board of Alpaels in case #94-452-XA in the following respects; height of the structures and equipment, additional roadbed; and posts and trains and equipment; additional roadbed; and posts and country of the structures and equipment; additional roadbed; and posts and country of the structures and equipment; additional roadbed; and posts and country of the structures and equipment; additional roadbed; and posts and country of the structure of the structure

LAWRENCE E-SCHMIDT Zoning Commissioner for Baltimore County

NOTES: (1) Hearings alto Hardicapped Accessible; for special accommodations Please Call 87-3353.

(2) or Information concerning the File and/or Hearing, Please Call 887-3331.

10/043 Oct. 5.

CERTIFICATE OF PUBLICATION

TOWSON, MD., /0//3

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of ___successive weeks, the first publication appearing on ____/\(\text{U}\)\(\sigma_{\sigma}\), 19 \(\frac{9S}{S}\).

THE JEFFERSONIAN,

LEGAL AD. - TOWSON

Towsen, Maryland

Posted by	Remarks	Location	Petitions Location	District.
e ·		2	g :	Or:
leady	Remarks:	Signer Locates to dury	Location of property: SES Ridge Rd.	Posted for: Special Hearing
Date of return: Walson		Location of Signa: Locating the dwest on frequently being the wind	Positioner: Balta, Gos. 4 Flor Co. Location of property: SFS Ridgo Rd. OPA, Go. 1. Post 5 Waf Falls Rd	District Date of Posting 10/13/95 Posted for: Specific Hearing

RECEIVED CE OF FINANCE - REVENUE DIVISION

9/8/95
9/8/95 BALTIMORE COUNTY, MARYLAND 2)(8/95) 56/8/6 #040 - SPECIAL HEARING - \$250.00 J. Carroll Holzer, P.A. SWC Ridge & Joel VALIDATION OR SIGNATURE OF CASHIER Oundaking (a) sales " AMOUNT \$ DROP-OFF - NO REVIEW 177M #114 — WCR 暴素線集製刷 285.00 001-6150 **154315** - \$245 (M)

WHITE - CASHIER

PINK - AGENCY YELLOW - CUSTOMER

TO: PUTUXENT PUBLISHING COMPANY
October 5, 1995 Issue ~ Jeffersonian

Please foward billing to:

J. Carroll Holzer, Esq. 305 Washington Avenue #502 Towson, ND 21204 825-6961

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore
County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-117-SPH (Item 114)

Ivy Hill Substation

SE/S Ridge Road, opposite Gent Road and SW of Falls Road

8th Election District - 3rd Councilmanic

Legal Owner: Baltimore Gas and Electric Company

Petitioners: Friends of the Ridge

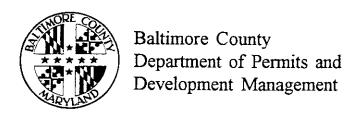
HEARING: MONDAY, OCTOBER 30, 1995 at 11:00 a.m.. in Room 118, Old Courthouse.

Special Hearing to determine whether BGE's construction plans for the subject site are inconsistent and in violation of the approved special exception by the County Board of Appeals in case #94-452-XA in the following respects: height of the structures and equipment; number of structures and equipment; additional roadbed; and posts and trailer with mobile transformer.

LAWRENCE E. SCHMIDT ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

(2) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



September 25, 1995

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified hereinin Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-117-SPH (Item 114)

Ivy Hill Substation

SE/S Ridge Road, opposite Gent Road and SW of Falls Road

8th Election District - 3rd Councilmanic

Legal Owner: Baltimore Gas and Electric Company

Petitioners: Friends of the Ridge

HEARING: MONDAY, OCTOBER 30, 1995 at 11:00 a.m.. in Room 118, Old Courthouse.

Special Hearing to determine whether BGE's construction plans for the subject site are inconsistent and in violation of the approved special exception by the County Board of Appeals in case #94-452-XA in the following respects: height of the structures and equipment; number of structures and equipment; additional roadbed; and posts and trailer with mobile transformer.

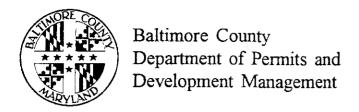
Armold Jablon Director

cc: Baltimore Gas & Electric Co.

J. Carroll Holzer, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.

- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
- (3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.



October 12, 1995

NOTICE OF REASSIGNMENT

Rescheduled from 10/30/95

CASE NUMBER: 96-117-SPH (Item 114)

Ivy Hill Substation

SE/S Ridge Road, opposite Gent Road and SW of Falls Road

8th Election District - 3rd Councilmanic

Legal Owner: Baltimore Gas and Electric Company

Petitioners: Friends of the Ridge

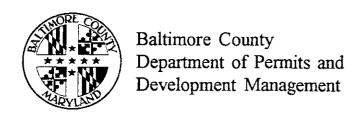
Special Hearing to determine whether BGE's construction plans for the subject site are inconsistent and in violation of the approved special exception by the County Board of Appeals in case #94-452-XA in the following respects: height of the structures and equipment; number of structures and equipment; additional roadbed; and posts and trailer with mobile transformer.

HEARING: TUESDAY, NOVEMBER 7, 1995 at 9:00 a.m. in Room 118, Old Courthouse, 400 Washington Avenue, Towson MD 21204.

ARNOLD JABLON DIRECTOR

cc: J. Carroll Holzer, Esq. Robert A. Hoffman, Esq.

Baltimore Gas Electric Company



October 27, 1995

NOTICE OF POSTPONEMENT

CASE NUMBER:

96-117-SPH

PETITIONER(S):

Friends of the Ridge

LEGAL OWNER(S):

Baltimore Gas Electric Company

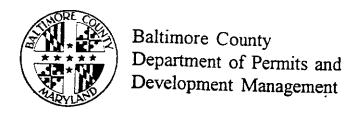
THE ABOVE MATTER, PREVIOUSLY ASSIGNED TO BE HEARD ON NOVEMBER 7, 1995, HAS BEEN POSTPONED AT THE REQUEST OF ROBERT A HOFFMAN, ATTORNEY FOR THE LEGAL OWNERS.

NOTIFICATION OF THE NEW HEARING DATE WILL BE FORWARDED SHORTLY.

Arnold Jablon Director

cc: J. Carroll Holzer, Esq.
Robert A. Hoffman, Esq.

AJ:ggs



June 19, 1996

NOTICE OF REASSIGNMENT

CASE NUMBER: 96-117-SPH (Item 114)

Ivy Hill Substation

SE/S Ridge Road, opposite Gent Road and SW of Falls Road

8th Election District - 3rd Councilmanic

Legal Owner: Baltimore Gas and Electric Company

Petitioners: Friends of the Ridge

Special Hearing to determine whether BGE's construction plans for the subject site are inconsistent and in violation of the approved special exception by the County Board of Appeals in case #94-452-XA in the following respects: height of the structures and equipment; number of structures and equipment; additional roadbed; and posts and trailer with mobile transformer.

HEARING: THURSDAY, JULY 11, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

ARNOLD JABLON

DIRECTOR

cc: J. Carroll Holzer, Esq.
Robert A. Hoffman, Esq.
Baltimore Gas Electric Company



Baltimore County Department of Permits and Development Management

Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

July 3, 1996

NOTICE OF POSTPONEMENT

CASE NUMBER:

96-117-SPH

PETITIONER(S):

Friends of the Ridge

LOCATION:

Ridge Road and Joel Court

THE ABOVE MATTER, PREVIOUSLY ASSIGNED TO BE HEARD ON JULY 11, 1996, HAS BEEN POSTPONED AT THE REQUEST OF ARNOLD JABLON, DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT.

NO CONSTRUCTION IS BEING DONE ON THE SITE AND PERMITS ARE STAYED PENDING THE CIRCUIT COURT DECISION. AFTER THE ISSUANCE OF THE CIRCUIT COURT DECESION, THE PETITIONERS, IF THEY STILL WISH TO PROCEED WITH THE INSTANT MATTER, MAY CONTACT THIS OFFICE TO REQUEST SAME BE RESCHEDULED.

Arnold Jablon Director

cc: J. Carroll Holzer, Esq. Robert A. Hoffman, Esq. 1/13/97 - Per Rot Hoffman Circuit Court reached Decession last week, however, Motions are still jending.

AJ:ggs



Baltimore County Department of Permits and Development Management

Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

February 14, 1997

NOTICE OF REASSIGNMENT

CASE NUMBER: 96-117-SPH
Ivy Hill Substation

SE/S Ridge Rad, opposite Gent Road and SW of Falls Road

8th Election District - 3rd Councilmanic

Legal Owner(s): Baltimore Gas and Electric Company

Petitioner(s): Friends of the Ridge

Special Hearing to determine whether BGE's construction plans for the subject site are inconsistent and in violation of the approved special exception by the County Board of Appeals in case #94-452-XA in the following respects: height of the structures and equipment; number of structures and equipment; additional roadbed; and posts and trailer with mobile transformer.

HEARING: *THURSDAY, MARCH 20, 1997 at 9:00 a.m. in Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland.

ARNOLD JABLON

DIRECTOR

cc: J. Carroll Holzer, Esq.
Robert A. Hoffman, Esq.

*Date cleared with both attorneys.

AJ:ggs



IN THE MATTER OF Friends of the Ridge	* BEFORE THE ZONING
	* BALTIMORE COUNTY
Falls at Ridge Rds.	
3rd Councilmanic Dia	strict * CASE NO. 96-117-SPH
* * * * *	* * * * * * *
	SUBPOENA
Please process in Rule IV (c).	n accordance with Zoning Commission
TO: Custodian of the Permits and Deve County Office B	elopment Management
documents and or objects Room 118, Old Cou	ANDED TO: () Personally appear; (^X) Production jects only; () Personally appear and products; s; arthouse, 400 Washington Ave., Towson
at	ance is required)
•	
	· · · ·
Thursday	the 20th day of March
	the 20th day of March
97 ., at 9:00	a.m. //*/**.
97 . at 9:00 YOU ARE COMMANDE	a.m. Axx. D TO produce the following documents or
19 97, at 9:00 YOU ARE COMMANDED objects: J. Carroll Hole	a.m. A.X. D TO produce the following documents or Complete file in case no. 94-452-XA zer.P.A. BGE: S/w corner of Ridge Rd. and Joel
you are commanded objects: J. Carroll Hold 305 Washing Suite 50	a.m. A.M. D TO produce the following documents or Complete file in case no. 94-452-XA zer, P.A. BGE; S/w corner of Ridge Rd. and Joel ton Ave. 02
you are commanded objects: J. Carroll Hold 305 Washingt Suite 50 Towson, MD	a.m. AXXX. D TO produce the following documents or Complete file in case no. 94-452-XA Zer, P.A. BGE; S/w corner of Ridge Rd. and Joel ton Ave. 02 021204 825-6961
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you are commanded objects: J. Carroll Hold 305 Washing Suite 50 Towson, MD (Name of Party or Assubpoena)	a.m. Axx. D TO produce the following documents or Complete file in case no. 94-452-XA zer, P.A. BGE; S/w corner of Ridge Rd. and Joel ton Ave. 02 021204 825-6961 ttorney, Address and Phone Number requesting Toning Commissioner
YOU ARE COMMANDED Sobjects: J. Carroll Hold 305 Washing Suite 56 Towson, MD (Name of Party or Affective subpoena) Date 9:00 9:00 One of Party of Affective subpoena	a.m. AXXX. D TO produce the following documents or Complete file in case no. 94-452-XA Zer, P.A. BGE; S/w corner of Ridge Rd. and Joel ton Ave. 02 021204 825-6961 ttorney, Address and Phone Number requesting Coning Commissioner SHERIFF'S RETURN
YOU ARE COMMANDED Sobjects: J. Carroll Hold 305 Washing Suite 56 Towson, MD (Name of Party or Affective subpoena) Date 9:00 9:00 One of Party of Affective subpoena	a.m. AXXX. D TO produce the following documents or Complete file in case no. 94-452-XA Zer, P.A. BGE; S/w corner of Ridge Rd. and Joel ton Ave. 02 021204 825-6961 ttorney, Address and Phone Number requesting Coning Commissioner SHERIFF'S RETURN
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YOU ARE COMMANDED Sobjects: J. Carroll Hold 305 Washing Suite 56 Towson, MD (Name of Party or Affective subpoena) Date 9:00 9:00 One of Party of Affective subpoena	a.m. AXXX. D TO produce the following documents or Complete file in case no. 94-452-XA Zer, P.A. BGE; S/w corner of Ridge Rd. and Joel ton Ave. 02 021204 825-6961 ttorney, Address and Phone Number requesting Coning Commissioner SHERIFF'S RETURN
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YOU ARE COMMANDED Sobjects: J. Carroll Hold 305 Washing Suite 56 Towson, MD (Name of Party or Affective subpoena) Date 9:00 9:00 One of Party of Affective subpoena	a.m. AXXX. D TO produce the following documents or Complete file in case no. 94-452-XA Zer, P.A. BGE; S/w corner of Ridge Rd. and Joel ton Ave. 02 021204 825-6961 ttorney, Address and Phone Number requesting Coning Commissioner SHERIFF'S RETURN

IN THE MATTER OF	*	BEFO	RE TH	E ZO	NING			
Friends of the Ridge v. BGE	*	COMM	ISSIC	NER (OF			
Falls at Ridge Rds.	*	BALTIMORE COUNTY						
3rd Councilmanic District	*	CASE	NO.	96-1	17-SPH	<u>-</u>		
* * * * * *	*	*	*	*	*	*	*	
	SUB1	POENA						
Please process in accordance with Zoning Commission Rule IV (c). TO: Michael Moorfield								
DEPRM County Courts Bldg, Tows	son							
YOU ARE HEREBY COMMANDED TO: () Personally appear; () Produce documents and or objects only; (X) Personally appear and produce documents or objects; Room 118, Old Courthouse, 400 Washington Ave., Towson at								
(Place where attendance is	requi	red)						
•								
on Thursday the	20tl	h	day o	of Ma	rch			
97 ; at 9:00	<u> </u>	a.m. <i>)</i>	₩¥.					
YOU ARE COMMANDED TO produce the following documents or objects: Complete file, site plans, copies of permits and all other documents related to expansion to BGE substation. Suite 502 Towson, MD 21204 Case #94-452-XA 825-6961								
(Name of Party or Attorney, Address and Phone Number requesting subpoena) Date 3/13/97 Shuff								
		Zoni	ng Co	ommis	sione	•		
HR	RIFF	'S RE	_				1.00	
and an date indicated below.								
()-Served and copy deliver ()-Unserved, by reason of Date:		Fee:	\$					
Ja ve •	Date:							

SHERIFF

Friends of the Ridge v. BGE * COMMISSIONER OF Falls at Ridge Rds.	TN	THE	Mamma	יוֹר סי			*	BEFO	RE T	HE ZO	NING		
* BALTIMORE COUNTY * CASE NO. 96-117-SPH * * * * * * * * * * * * * * * * * * *	IN THE MATTER OF					_							
* CASE NO. 96-117-SPH * * * * * * * * * * * * * * * * * * *						<u>. Deb</u>	*	COMM	TOOT	ONER	Or		
SUBPOENA Please process in accordance with Zoning Commission Rule IV (c). TO: Jack Berger, DEPRM	ra.	LIS a	t Kla	ge kas			*						
SUBPOENA Please process in accordance with Zoning Commission Rule IV (c). TO: Jack Berger, DEPRM						<u>-</u>	*	CASE	NO.	96-1	.17-SPH		
Please process in accordance with Zoning Commission Rule IV (c). TO: Jack Berger, DEPRM	*	*	*	*	*	*	*					*	*
Rule IV (c). To: Jack Berger, DEPRM County Courts Bldg Towson, MD YOU ARE HEREBY COMMANDED TO: () Personally appear; () Produce documents and or objects only; (X) Personally appear and produce documents or objects; Room 118, Old Courthouse, 400 Washington Ave., Towson Thursday on Thursday on Thursday Towson, MD YOU ARE COMMANDED TO produce the following documents or objects: J. Carroll Holzer, P.A. 305 Washington Ave. Correspondence and all other documents in the expansion to the BGE substation of the EGE substation of Case #94-452-XA 825-6961 (Name of Party or Attorney, Address and Phone Number requesting subpoena) Date SHERIFF'S RETURN () -Served and copy delivered on date indicated below.							<u>SUBI</u>	<u>POENA</u>					
County Courts Bldg Towson, MD YOU ARE HEREBY COMMANDED TO: () Personally appear; () Produce documents and or objects only; (X) Personally appear and produce documents or objects; Room 118, Old Courthouse, 400 Washington Ave., Towson at (Place where attendance is required) on Thursday the 20th day of March you are commanded to produce the following documents or objects: J. Carroll Holzer, P.A. 305 Washington Ave. Suffe 502 Towson, MD 21204 Case #94-452-XA 825-6961 (Name of Party or Attorney, Address and Phone Number requesting subpoena) Date 3/3/97 Zoning Commissioner SHERIFF'S RETURN () -Served and copy delivered on date indicated below.	Ru]				in a	accord	ance	with	Zoni	ng Co	mmissi	on	
documents and or objects only; (X) Personally appear and produce documents or objects; Room 118, Old Courthouse, 400 Washington Ave., Towson at (Place where attendance is required) Thursday the 20th day of March 19 7, at 9:00 YOU ARE COMMANDED TO produce the following documents or objects: J. Carroll Holzer, P.A. 305 Washington Ave. Suffe 502 Towson, MD 21204 Case #94-452-XA 825-6961 (Name of Party or Attorney, Address and Phone Number requesting subpoena) Date 3/3/97 Zoning Commissioner SHERIFF'S RETURN () -Served and copy delivered on date indicated below.	TO	Cou	inty C	ourts				200					
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SHERIFF

IN THE MATTER OF	* BEFORE THE ZONING						
Friends of the Ridge v. BGE	* COMMISSIONER OF						
Falls at Ridge Rds.	* BALTIMORE COUNTY						
3rd Councilmanic District	* CASE NO. 96-117-SPH						
· · · · · ·	* * * * *						
* * * * * * * * * * * * * * * * * * * *	CHIDDOWNA						
	SUBPOENA						
Please process in accordance with Zoning Commission Rule IV (c).							
TO: Custodian of the Records Permits and Development County Office Bldg., To	Management						
YOU ARE HEREBY COMMANDED TO: () Personally appear; $($) Produce documents and or objects only; () Personally appear and produce documents or objects;							
at	400 Washington Ave., Towson						
(Place where attendance is required)							
•							
on Thursday the	20th day of March						
19 97 , at 9:00	a.m. AXXX.						
YOU ARE COMMANDED TO produce the following documents or objects: Complete file in case no. 94-452-XA J. Carroll Holzer, P.A. BGE; S/w corner of Ridge Rd. and Joel Ct. 305 Washington Ave. Suite 502 Taylor MD 21204 825-6961							
Towson, MD 21204							
(Name of Party or Attorney, subpoena)	Address and Phone Number requesting						
Date 3/13/97	James Shitt						
Zoning Commissioner							
SHERIFF'S RETURN							
()-Served and copy delivered on date indicated below.							
()-Unserved, by reason of Date:							
	SHERIFF						



Court of Special Appeals

Courts of Appeal Building Annapolis, Md. 21401-1699

(410) 974-3646 WASHINGTON AREA (301) 261-2920 KATHARINE M KNIGHT CHIEF DEPUTY

February 27, 1997

94-452-XA

J. Carroll Holzer, Esquire 305 Washington Avenue Suite 502 Towson, Maryland 21204

Re: Friends of the Ridge et al. vs. Baltimore Gas

and Electric Company

PHC No. 1187, September Term, 1996

Dear Mr. Holzer:

Be advised that by Order dated February 27, 1997, Appellants' Motion for Injunction Pending Appeal was denied. A copy of the Order is enclosed.

Very truly yours,

lie E. Ladet

Leslie D. Gradet

Clerk

LDG:1s

Enclosure

cc: Kathleen Gallogly Cox, Esquire Patricia A. Malone, Esquire

Friends of the Ridge et al. *

In the

Appellants

* COURT OF SPECIAL APPEALS

vs.

PHC No. 1187

Baltimore Gas and Electric * September Term, 1996

Company

Appellee

ORDER

This Court having read and considered Appellants' Motion for Injunction Pending Appeal and Appellee's opposition to the motion, it is this 14 day of February, 1997, by the Court of Special Appeals,

ORDERED that the motion is denied.

JUDGE 7. Thursky for

IN THE MATTER THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO. . COUNTY BOARD OF APPEALS IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF RIDGE ROAD AND JOEL COURT STH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

- BEFORE THE
- * OF
 - BALTIMORE COUNTY
- * Case No. 94-452-YA

OPINION

This case comes on appeal to this Board from the Ioning Commissioner's Order dated June 24, 1994 in which a Petition for Special Exception and Petition for Variance for the subject properties were granted. The case was heard in five days of testimony: October 4, 1994; January 10, 1995; January 12, 1995; January 17, 1995; and January 19, 1995. It should be noted that one Board member was replaced, prior to commencing Day \$2, with no objection from either Counsel. Petitioner was represented by Robert A. Hoffman, Esquire, and C. Carey Deeley, Jr., Esquire, VENABLE, BASTJER, HOWARD, LLP; and Martha A. Delea, Esquire, of Baltimore Gas & Electric Company. Protestants were represented by J. Carroll Holzer, Esquire, HOLZER & LEE. People's Counsel for Baltimore County also participated in these proceedings.

Due to the length of the case, transcripts were prepared for use by the Board in preparing for deliberation in this matter; said deliberation being in open meeting on February 22, 1995. Because of the presence of the transcripts, the evidence and testimony will not be recounted herein.

Argument was made on the part of the Protestants regarding the jurisdiction of this case before the Board. Protestants allege

that, due to the presence of a note on the final development plan indicating disposition of the parcel known as Tract A, the plan which is the subject of this hearing should have gone to the Planning Board for advice on the appropriateness of the instant case in relation to the final development plan. Having heard the testimony of expert witnesses Horman Gerber, for the Protestants, and George Gavrelis, for the Petitioner, the Board agrees with the Petitioner that the subject case is not a deviation from the final development plan, and, in fact, that the transfer of title of Tract A to the Baltimore Gas & Electric Company (hereinafter "BGE") occurred prior to the sale of other lots within the development. Therefore, this case is properly before the Board.

The facts in the case are essentially undisputed. The subject property is located in the R.C. 5 zone and is made up of three adjoining tracts. The combined area of all three tracts is approximately 2.9 acres. The area known as Tract C on Petitioner's Exhibit 2 is the subject of an existing special exception granted on March 28, 1956, for the operation of a local electric distribution substation known as Ivy Hill Substation. RCE proposes to replace existing equipment within the substation, enlarge the area for placement of electrical equipment, and increase the capacity of the Ivy Hill Substation. The issues before this Board are whether (a) BGE is able to meet the tests under Section 411 of the Baltimore County Roming Regulations (hereinafter "BCSR") for public utility uses; (b) whether, due to the nature of the proposed development, the tests pursuant to Section 502.1, Special

Exceptions, are met; and (c) whether the Petitioner is due variances from interior lot lines between Tracts A, B and C, pursuant to Section 307, Variances, of the BCSR.

The Protestants attempted to illustrate for the Board that (a) need can be maintained by placement of similar substation equipment in other areas outside the area served by the Ivy Hill Substation; (b) the tests prescribed under Section 502 concerning special exceptions could not be met by the subject Petition; and (c) the Petitioner is not entitled to a variance subject to Section 307 of the BCER, attempting to prove that no special conditions exist on the site.

Over the five days of testimony, much was discussed regarding various unresolved issues as they relate to this Board; namely, the effects of electromagnetic fields (hereinafter EMF's) and what standing those forces may have in regard to Section 502.1. In response to a question from the bench, the Protestants' expert witness, Eory Raphael Glaser, revealed that no legal standard for exposure to EMF's exists in the State of Maryland; further, the collection of data by the Petitioner's field personnel and witness, Bonnie L. Johansen, reveals that levels of EMF readings in and around the community, and more specifically around the subject site, are, and are expected to be, at levels below those which are commonly found in the average American household. As there is no legal standard by which this Board is compelled to judge the effects of EMF's pursuant to Section 502.1, coupled with the fact that aging equipment will be replaced by new and, from an

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engineering standpoint, a technologically superior brand of equipment, and the testimony indicating the expected levels of exposure to EMF's, the Board can find no probative value to the evidence presented in opposition to the Petition on the basis of the argument of the presence of EMF's.

The first issue to be decided by this Board, therefore, is the question of need pursuant to Section 411 of the BCER regarding distribution of electric power. Petitioner brought evidence and testimony by an expert in forecasting electric demand, James F. Ryan. Protestants offered the testimony of Ronald P. Hanley, an employee for a waste collection and recycling company, and one who had three courses in statistics at Pennsylvania State University, and who prepared various graphs which were introduced into evidence. According to the testimony of Charles S. Taylor, an engineer and expert in the area of electrical system planning, the BGE franchise with the Public Services Commission in the State of Maryland is required to supply power at all times and satisfy all In short, the obligation of the Petitioner is to serve the demand at peak periods. The Protestants allege that the peak demand experienced on one day in the winter of 1994 was, admittedly by the Petitioner's witness, a one-time occurrence; however, that one-time occurrence established the new demand.

It was well established during the course of evidence and testimony that existing demand, prior to the single-day occurrence in 1994, is not met by the existing substation capacity; therefore, need for enlargement of the substation given current demand is

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Case No. 94-452-XA Baltimore Gas & Electric Co.

justified. As indicated by Petitioner's experts, future demand is forecasted and is the basis for establishing future demand in designing facilities such as the Ivy Hill Substation. The analysis of the need comparison versus capacity presented by Protestants' witness, Mr. Hanley, points to a future need for increased capacity from this substation. Protestants would have the Petitioner increase the capacity of the substation in increments which stay just shead of demand. The Board notes that such alteration of the substation places unreasonable engineering constraints and unnecessary additional cost to the ultimate development of this site. Such costs would be unnecessarily borne by all electric consumers for the benefit of those in the surrounding community. The Public Services Commission dictates that BGE must provide sufficient power to exceed demand. Petitioner has obviously met its burden of proof pursuant to Section 411 as buttressed by the evidence presented by Protestants in their graphic analysis of need versus capacity.

The Protestants further allege that the Ivy Hill Substation should not be used to supply power to areas outside of their own locale. Again, BGE was able to demonstrate that, because of its requirement to provide power, it was forced into the position of switching power distribution away from the Ivy Hill Substation as a result of the peak demands in 1994, creating a similar condition at the nearby Delight Substation in Owings Hills, an area growing even faster than the area surrounding Ivy Hill.

The Board therefore finds as a fact that not only has need

been demonstrated but that in further reviewing the requirements of 502.1 the health, safety and welfare of the general public is suspect when required power is not delivered to the homes served by the substations as mandated.

Much of the five days of testimony surrounded the requirements of Section 502.1. The first test under 502.1 is that the proposed use for which the special exception is required will not be detrimental to the health, safety or general welfare of the locality involved. The Board has already commented on the issue of EMF's; the Board can find no reason to believe that the presence of the proposed enlarged substation would have any impact on the health, safety or general welfare of the locality as a result of the presence of EMF's. Concerning the presence of the requisite stormwater management pond as part of the development of the site, the Protestants allege that said pond presents a breach of the safety to be enjoyed by the residents of the neighborhood and their children. Evidence and testimony by the Petitioner point to the fact that legal design standards for the pond will be maintained; therefore, the Board finds that no safety concerns are generated by the presence of a well-designed and well-constructed stormwater management pond.

Pursuant to the issue of general welfare under this subsection, the Protestants allege that property values will be negatively impacted on the expansion of the proposed substation. The Board finds as a fact that the Ivy Hill Substation has existed since 1958; the Board also finds as a fact that all property owners

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prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property being with BGE, and that any effect on property values in relation to the existence of the substation were already felt in the purchase of their respective properties. Furthermore, as indicated above, the health, safety and general welfare of other localities served by the Ivy Hill Substation continues to be suspect so long as the substation sits unaltered, as most homes in the area served by the Ivy Hill Substation rely on uninterrupted transmission of electric power as the sole source of energy for the heating of their homes.

Regarding 502.1B, the subject proposal obviously does not tend to create congestion in roads, streets or alleys in the community; testimony was presented that the subject substation would be only periodically visited for maintenance of equipment.

The Protestants commented on the potential hazard from fire or other dangers, namely explosions, emitting from the expanded substation. The Board recognizes that the existence of electric equipment on the site presents an inherent danger. Monetheless, design standards are established both locally and nationwide for the siting and construction of such facilities, in addition to design and construction standards of the equipment to be placed thereon. EGE obviously agrees to adhere to any and all building and electric codes and standards in the construction of the proposed enlarged substation. Therefore, the potential for fire or explosion at this particular substation is no greater than would

exist at any other substation; further, the existing conditions, already being beyond capacity of the existing substation, present a greater danger from fire or explosion than a substantially enlarged substation equipped to handle ever-increasing demand. There were no facts or circumstances presented to indicate that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the sone. Schultz v. Pritts, 291 Nd. 1, 432 A.2d 1319 (1981)

The case presented here is one in which the Petitioner plans to expand an existing substation, accommodate existing and future demand with a reasonable buffer for same, and to do so on a part of the combined three tracts which allows for the greatest amount of space between the proposed expanded substation and nearby properties. The Board finds as a fact that not only has BGE met the standard in Schultz v. Pritts, but in fact has worked diligently to mitigate such ordinary hazards from the subject property to a degree that those hazards are below the standard normally found at similar sites. Therefore, the requirements of 502.10 have been easily met.

Section 502.1D speaks to the overcrowding of the land and concentration of population. The subject Petition includes evidence and testimony which indicates that BGE intends to raze an existing home on Tract B; the Board finds as a fact that the Petition will actually reduce the concentration of population and

Case No. 94-492-XA Baltimore Gas & Electric Co.
the intensity of overcrowding on the land. Section

the intensity of overcrowding on the land. Section 502.12 is similarly unaffected by the subject Petition as is 502.17. Schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, and adequate light and air all are unaffected by the proposed expanded substation.

Regarding 502.1G, the Board agrees with the testimony of Mr. Gavrelis when he states that the R.C. 5 zone permits some public utility uses as a matter of right and others as special exceptions which are presumed to be valid uses. The mere existence of homes in the R.C. 5 zone points to their need for power transmission; therefore, the reasoning follows that facilities to provide the transmission of power as a natural consequence of the existence of those homes dictates that not only are electric substations Consistent with the purposes of the property's classification but are a need to be fulfilled, in the allowance of development in the R.C. 5 zone.

Regarding 502.1H, the Board heard testimony from Mr. Gavrelis and Monica McGrady, BGE project engineer and an expert in site planning, that because of the intent to raze the existing structures which include a residence and swimming pool, coupled with the planned siting of equipment within the cleared area and the additional landscaping, the impermeable surface and vegetative retention provisions are set by the subject Petition. Concerning 502.1A, the Board did hear testimony from experts in property values from both the Petitioner and Protestants; the Board recognizes that one of the concerns in regard to property values is

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the visual impact that an enlarged substation presents. The Board is not compelled by the argument that property values will be negatively impacted; however, the Board recognises that the residents have come to be familiar and comfortable with what has been termed the pastoral setting of the neighborhood. In recognizing that BGE is meeting the requirements for vegetative retention provisions of the regulations, the Board is compelled to require as part of any improvements pursuant to this Petition to include landscaping which serves to provide a visual buffer between the subject site and surrounding properties, in deference to the adjoining property owners. Therefore, the Board will grant the special exception, subject to restrictions.

*

The Petitioner finally must meet the tests under Section 307.1 in pursuing variance from lot line setbacks, said lot lines existing between tracts owned by the Petitioner. George Gavrelis clearly points out in his testimony that Section 306 of the BCER speaks to lot area regulations for erecting substations. The Petitioner seeks a variance under 307.1 from BCER 1A04.3B.3 which requires a 50-foot setback from any lot line other than a street line. The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as most. The Petitioner recognizes that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within otherwise required satbacks, may be construed under 1A04.3B.3 as a principal building, and is therefore requesting such variance. The Board is compelled

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to address the issue of 307.1 pursuant to the Petition. As stated by Mr. Gavrelis in his testimony, the Board finds that the application of Section 306 points to the fact that public utilities are unique in their requirements. Therefore, the spirit and intent of the BCER in height, area, off-street parking and sign regulations are met by the subject Petition. Since the Petitioner seeks relief from 1A04.3B.3, the Petitioner must meet the tests in trying to prove that special circumstances or conditions exist that are peculiar to this land or structure that is the subject of the variance request. In David Crossell v. Arthur Thomas Ward, III, CSA No. 94-617, filed January 4, 1995, Judge Cathell, the Court of Special Appeals, states that the conditions which are peculiar to the land or structure sust be not before the tests for strict application of the BCER and any resulting practical difficulty or unreasonable hardship are reviewed. The Board finds as a fact that the existing electrical substation is a substation which is far undersized in capacity for the required demand in the existing An immediate need in increased capacity has been adequately demonstrated to address the issue of an unusual condition which exists with the existing structure. mandated to increase the capacity of any substation in order to stay sheed of demand. The conditions which exist in the existing substation are unique in that BGE has been unable to even meet existing demand. The Board finds that the existing conditions and inaufficient capacity force BGE to increase capacity; furthermore, in order to accommodate existing and increasing demand, in

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County Board of Appeals of Baltimore County

ORDERED that Petition for Variance from Section 1A04.3B.3 is hereby GRANTED; and it is further

ORDERED that the Petition for Special Exception for an electrical substation in R.C. 5 zone is hereby GRANTED subject to the following restrictions:

- 1. To the extent possible due to site conditions, the Board will require, as a condition of the special exception, that landscaping around the proposed substation and stormwater management pond shall be double that shown on the Landscape Plan, and that the height of the specimen trees to be planted shall be increased from 8'-10' to 10'-12'; and
- 2. The screening shall be strictly maintained; any specimens which are planted pursuant to this Order which do not survive shall be immediately replaced, and that understory vegetation will be encouraged to increase in density. Failure of the Petitioner to maintain the screening shall result in the forfeiture of the special exception.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Robert O. Schuetz, Chairman

William T. Hackett

S. Diane Levero

In The Court of Special Appeals of Maryland

Friends	of t	<u>he</u>	Ridge.	et al.,
	App	ell	ants	

v.

Petition No. PHC # 1187

Baltimore Gas & Electric Company
Appellee

MOTION FOR INJUNCTION PENDING APPEAL

COMES NOW Appellants, pursuant to Rule 8-425 of the Maryland Rules of Civic Procedure ("Maryland Rules"), through their attorney, J. Carroll Holzer of Holzer & Lee, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, and respectfully files herewith a Motion for Injunction Pending Appeal and for same would show unto the Court as follows.

- 1. The Baltimore Gas & Electric Company ("BGE") filed a Petition for Special Exception and a Petition for Variances, docketed, by the Baltimore County Zoning Office, as Case No 94-452-XA, in connection with its expansion of a substation located at 1821 Ridge Road, in the Ivy Hill section of Baltimore County. The County Board of Appeals granted both Petitions and the Appellants appealed to the Circuit Court for Judicial Review on June 16th, 1995. The Appellants are adjacent and abutting property owners whose property will be negatively impacted by the BGE activity. Judge Edward DeWaters granted an Injunction to Stay the Operation of BGE Permits pending the Circuit Court review (Exhibit #2 and Exhibit #26). Judge Lawrence Daniels affirmed the Board's decision and refused to grant Appellants' Motion to Continue the Stay (Exhibit #28) No hearing was held and no explanation given for Judge Daniels' denial (Exhibit #29)
- 2. Appellants have received a letter dated February 10, 1997 from BGE indicating their intention to resume construction on the substation immediately (Exhibit #30). Appellant

LAW OFFICE

HOLZER AND LEE

305 WASHINGTON AVENUE
SUITE 502

TOWSON, MARYLAND
21204

(410) 825-6961 FAX (410) 825-4923 believes therefore that time is of the essence and that this situation falls within the pervue of Rule 8-425(f) designating an exceptional case.

- Appellants request no bond be required based upon the reasons hereinafter set forth, and that such relief is needed to prevent the case from becoming moot pending this appeal
- A. On or about June 14, 1995, Baltimore County Department of Licenses and Permits issued a grading permit for subject BGE site at 1821 Ridge Road, permit number B237378. Those permits were issued based on BGE's submitted Building Permit Plan (Exhibit 1). On June 21, 1995, the County Department of Licenses and Permits issued permit number B237372 to construct 11 foundations for the substation addition.
- B On June 30, 1995 the Circuit Court for Baltimore County granted the Appellants an Injunction to Stay Operation of Permits. (Exhibit #2 and Exhibit #26) Judge Edward Dewaters found that the Appellants had a reasonable expectation to prevail on the merits, that the Appellants would be irreparably harmed by the substation's construction and that Appellants need not post a bond
 - C. A Judicial Review was held on July 20, 1995 before the Circuit Court of Baltimore County and a decision was rendered on December 24, 1996, which affirmed the decision of the CBA. (See Exhibit #12)
 - D. On January 3, 1997 a Motion to Alter or Amend the Judgment was filed by the Appellants (See Exhibit #31)
 - E. On January 3, 1997 a Motion to Continue the Stay of Operation of Permits pursuant to rules 7-205 and BB 70-80, BB 70 was filed by the Appellants. (See Exhibit #28)
 - F. On January 6, 1997 the Appellants filed an appeal to the decision of Judge Lawrence Daniels to the Court of Special Appeals. (Exhibit 3) Appellants will raise valid legal issues before the Court of Special Appeals, including the need to amend the Final Development Plan for the substation that would be required to go to the County Planning Board and the legality of the granted variance. The CBA and the Circuit Court erred as a matter of law in granting BGE's Petition for Variance because the utility failed to establish the "uniqueness" of this site which would permit the application of the practical difficulty, or unreasonable hardship standard as described in Cromwell v. Ward, 102 Md. App. 691 (1995). Additionally, the Appellants allege that the CBA and the Circuit Court erred in granting the Special Exception when it failed to

consider all the tests set forth in Sec 502.1 and Sec 411 of the Baltimore County Zoning Regulations Finally, the CBA and the Circuit Court erred in not enforcing the Baltimore County Code requiring an amendment to the Final Development Plan, briefed and argued in this case

- G. On January 31, 1997 the Appellants' Motion to Continue the Stay of Operation of Permits was denied by the Circuit Court of Baltimore County. See Order attached. (Exhibit 29)
- H. On February 3, 1997 the Motion to Alter or Amend Judgment was denied by the Circuit Court for Baltimore County. See Order attached (Exhibit #32)
- I. Appellants will be irreparably harmed by the operation of said grading and foundation permits because the buffers and screening provided by the mature stand of 80 year old hardwood trees between the BGE substation and Appellants' residences have been cut down in large numbers reducing the value of Appellants' real property, significantly diminishing the peaceful enjoyment of their residential neighborhood. The large number of tall hardwood trees on the .7 acre site between the BGE substation and residential homes that has already been cleared is an obvious blight and major hardship to the adjoining property owners. With the grading, cutting and removal of trees and utility maintenance come a constant flow of trucks, heavy equipment, and parked vehicles owned by BGE and their subcontractors along Ridge Road, impeding neighbors' vehicle access to Joel Court and creating general disturbance in the immediate area. In addition, loud construction noise emanates from the substation commencing at 7 a.m. All of this action constitutes a nuisance and dramatically reduces the opportunity and rights of adjoining property owners to fully utilize and enjoy their homes. (See Affidavit of Carol Rytter, Exhibit 4, attached hereto and incorporated herein)
- J. Affidavit of Rosemary Hanley, attached hereto and incorporated herein (as Exhibit 5), says that she is being permanently injured by construction of the substation pending its appeal because of the diminution of the value of her home having a 22,100 square feet electrical facility operating within ten feet of her property line.
- K. Appellants Ronald Hanley, Robert O'Hara, Carl Follo, Robert Rytter, Cynthia Brown, and Nigel Howse through their affidavits attached hereto (as Exhibit 6A through 6F) testify that without appealing their original assessment of property by the State of Maryland, Department of Assessments and Taxation their properties were reassessed decreasing the market

value of their homes due <u>solely</u> to the proposed expansion of the substation. Appellant Pamela Follo in her affidavit attached hereto (as Exhibit 7) affirms this through her conversation with Mr. Russ, Supervisor, with the State of Maryland Department of Assessment and Taxation. Andrew Lansman (Exhibit 6 G) affirms that he did appeal his assessment and received a reduction in his assessment due to the BGE expansion.

- L. Appellant Joseph Czajkowski, through his affidavit attached hereto as Exhibit 8, testifies that he is involved in a civil suit with J.G.S. Builders, Falls Road Limited Partnership, O'Connor, Piper and Flynn Realtors and Mr. Steven Edelin, Realtor, regarding the market value damage to his property that not only will result but has already occurred due to the proposed expansion of this electrical facility. He will produce expert testimony stating both current and future damages. The scheduling of court dates in these civil proceedings is pending. (Exhibit 9)
- M. Excavation, stripping of mature hardwood trees, and construction of the expanded substation in a R.C. 5 zone prior to review by the Court of Special Appeals will create a use incompatible with adjoining property, irreparably harming Appellants. Appellant Carl Follo through his Affidavit attached hereto (as Exhibit 10), testifies that on June 18, 1995, he listed his house at 1 Joel Court for sale. His house was appraised at a value of \$415,000 prior to the issuance of the permits and construction and he has been advised by several real estate agents that he could expect to get only 75% of the appraised value, a reduction of \$106,250, because of the construction and substantial increase in size of the BGE substation. This is both immediate and substantial harm. He also testifies that since placing his house on the market he has not received any offer even though "like" homes in the area have sold and knows that this is due to the proposed expansion. He and his wife Pamela, are suffering immediate harm because he has been unable to attract interest from prospective buyers to his house because of the operation of trucks, heavy equipment, and erection of the planned electrical substation. Issuance of permit to construct 11 concrete foundations and work to perform same will cause immediate and irreparable harm to Appellants. It would set in motion the placement upon the substation site electrical equipment, lines and superstructures necessary to generate the requested electricity despite the fact your Appellants have filed an appeal to the Court of Special Appeals challenging the CBA's and the Circuit Court of Baltimore County's approval of the variances and special exception.

Appellants are attaching the CBA's and the Circuit Court of Baltimore County's decisions (as Exhibit 11 and Exhibit 12).

- N Appellants have alleged that as part of their Petition for appeal that this facility is not needed and that BGE failed to establish their need in accordance with the Baltimore County Zoning Regulations, and there is not a scintilla of evidence to justify BGE's expedient construction efforts to expand the Ivy Hill Substation pending review by the Court of Special Appeals. (See Affidavit of Ronald Hanley, Exhibit 13 with attachments and incorporated herein. See also Exhibit 12, p 13-14, the Circuit Court opinion found Petitioners' argument "logical and commanding")
- O. Even in the event this Court believes that need has been established, BGE has testified under oath affirmed in the record, that there is an acceptable alternative solution for them. Lawrence Taylor, a BGE engineer, testified that a mobile trailer could be used pending the outcome of the Petition for Judicial review. (Exhibit 14, letter of Clare Miller and Exhibit 15, testimony of BGE representative Lawrence Taylor). This mobile trailer was moved onto the site in the fall of 1995 with the full potential of phase I, allowing a 200% increase in electrical capacity and has been more than adequately servicing the community for approximately 15 months without detrimental effect to the service in the community.
- P. Appellants further allege BGE does not require a 22,000 sq. ft. facility, as testified before the CBA, in order to configure the electrical equipment within the substation to meet the need they defined before the CBA. In fact, during subsequent settlement proceedings, BGE proposed a new configuration which could be contained on fewer than 10,000 sq. ft. to meet the same need. (See Exhibit 27) Therefore, BGE will not be prejudiced by a granting of this stay until the Court of Special Appeals decision is rendered.
- Q. The County erred by issuing the above listed permits in the first place in that they do not comply with the decision of the CBA wherein it granted BGE's Petition for Special Exception and Variance. The plat to accompany the Special Exception (See Exhibit 3 contained in the Circuit Court file) established specified structure heights for equipment and uses for the site. Exhibit 1, attached hereto, the BGE Building Permit Plan, which was submitted to obtain the said permits shows different heights for their equipment exceeding the approved heights. In addition, it shows the creation of a location for a mobile transformer with guide posts that is not shown on the

site plan approved by the CBA for the Special Exception. The court should compare the original site plan and the subsequent Building Permit Plan. See the affidavit of Ira Brown. (Exhibit 16, and Chart attachment 16A)

R In August of 1995, the Appellants filed a Petition for Special Hearing before the Zoning Commissioner of Baltimore County to address significant differences in the site plan approved by the CBA and the Building Permit Plan submitted to the Department of Permits and Licensing of Baltimore County (See Exhibit 17). The Special Hearing was accepted by the County and scheduled for October 30, 1995, Case No. 96-117-SPH. (Exhibit 18) At the request of Mr. Robert Hoffman, attorney for BGE, this hearing was postponed without the consent of the Appellants. The case was rescheduled for November 7, 1995. (Exhibit 19) Again at the request of Mr. Robert Hoffman, without the Appellants' consent, the case was postponed. On November 10, 1995 Carroll Holzer, Esq. acting on behalf of the Appellants, wrote a letter to Mr. Arnold Jablon, Director, Department of Permits and Development Management, requesting that the hearing be rescheduled. (Exhibit 20) After numerous phone calls to Mr. Jablon requesting rescheduling of this hearing it was set for July 11, 1996. Once again, Mr. Hoffman by letter dated June 24, 1996 requested an additional postponement. (Exhibit 21) On July 3, 1996 Mr. Jablon postponed this hearing pending the Circuit Court decision. (Exhibit 22) On January 16, 1997 J. Carroll Holzer, Esq., acting on behalf of the Appellants, wrote Mr. Arnold Jablon requesting that the Special Hearing be scheduled. (Exhibit 33). On January 22, 1997 Mr. Robert Hoffman, acting on behalf of BGE, requested yet another postponement. (Exhibit 34) On January 27, 1997 Mr. Holzer demanded that the Hearing be scheduled. (Exhibit 35) To date the Petition for Special Hearing has not been honored. Also in dispute is the question regarding what type of structures constitute a building permit. In a letter to Mr. Jablon dated June 28, 1995 (Exhibit 23) permits are addressed. Mr. Jablon's response dated July 13, 1995 raises several issues that need to be addressed before the Zoning Commissioner. (Exhibit 24) The Appellants plan to present evidence at this hearing that conflicts with Mr. Jablon's interpretation. The Appellants requested this Special Hearing to establish whether BGE must abide by the CBA's decision on these issues. Since this hearing was requested to dispute the differences between the site plan that was approved by the CBA and the Building Permit Plan that BGE filed with the Department of Permits, as well as other jurisdictional decisions and the outcome could have a direct result on what is constructed

on the site The Appellants believe that it is necessary that this hearing and any appeals resulting from of the Zoning Commissioner's decision be allowed to occur before any construction is permitted

- S. Appellants' appeal before the Court of Special Appeals has a likelihood of success based on the legitimate legal issues raised and the facts preserved in the record. See Judge Kahls Circuit Court decision concerning variances. (Exhibit 25) See also Judge DeWaters decision regarding the previous injunction on this case wherein, he states: "These people will suffer and are suffering the construction of this facility by the Baltimore Gas and Electric Company at the present time despite the pendency of that appeal." (Exhibit 26, p 3) Further, Judge DeWaters stated, "there is continuing harm the more that this construction goes on and that becomes a more and more irreparable situation as each day goes by given the present situation". (Exhibit 26, p 3) He states that the Appellants have already been damaged and that their appeal has a likelihood of success based on legal issues.
- 4. WHEREFORE, Appellants respectfully request the Motion for Injunction Pending Appeal be Granted and that pursuant to Rule 8-425 (g) no bond or security be required.

J. Carroll Holzer Holzer and Lee

305 Washington Avenue

Suite 502

Towson, Maryland 21204

(410) 825-6961

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the _______day of February 1997, a copy of this foregoing Motion for Injunction Pending Appeal was sent to Robert Hoffman, Esquire, Venable Baetjer and Howard, 210 Allegheny Avenue, P.O.Box 5517, Towson, Maryland 21204.

Carroll Holzer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the ______day of February 1997, a copy of this foregoing Motion for Injunction Pending Appeal was sent to Janet McHugh, Associate General Counsel, BGE, 39 W. Lexington St., Baltimore, Maryland, 21201.

J. Carroll Holzer

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

Friends of the Ridge, et al. Appellants	*		
V.	*	Petition No	
Baltimore Gas & Electric Company Appellee	*	PHC No. <u>1187</u>	
	*	September Terr	n, 1996
* * * * * * * * * * * *	* * * * * * ORDER		* * * * * *
On this day of For Injunction Pending Appeal by Appella	ants; it is hereb	y:	
ORDERED that BGE be enjoined			
Road until such time as this Court rende			s further Ordered that
Appellants are excused from furnishing bo	ond or other to	rm of security.	
SIGNED AND ENTERED this _	Da	y of	, 1997.
		Judge	
		Court of Special A of Maryland	Appeals

PETITION OF FRIENDS OF THE RIDGE, et al. FOR	*	IN THE
JUDICIAL REVIEW	*	CIRCUIT COURT
IN THE MATTER OF BALTIMORE GAS AND ELECTRIC	*	FOR
COMPANY (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND	*	BALTIMORE COUNTY
VARIANCE	*	Case No.: 03-C-95-5315
ZONING CASE: 94-452-XA	*	

ORDER

Having considered the Appellants' Motion to Continue the Stay of Operation of Permits and any response thereto, it is this 3/6 day of day of the Circuit Court for Baltimore County,

ORDERED that the Motion to Continue the Stay of Operation of Permits is hereby DENIED.

JUDGE, CIRCUIT COURT FOR BALTIMORE COUNTY

TO1DOCS1/PAM01/0036664.01

Rules 7-205 and BB 70 - 80, BB 79, file this Motion to Continue the Stay of Operation of Permits from Baltimore County Department of Licensing and Permits in connection with expansion of the BGE substation at 1821 Ridge Road, Ivy Hill, granted by Judge Edward DeWaters on June 30, 1995, pending the decision of the Court of Special Appeals of Maryland, for the following reasons:

- 1. The application of Baltimore Gas and Electric Company, case Number 94-452-XA was tried and heard in five (5) days of testimony before the County Board of Appeals which rendered its decision on May 31, 1995 ordering that BGE's Petition for Special Exception for an electrical substation in an R.C 5 zone, and their Petition for Variance granted. The CBA approved the Special Exception subject to the plat to accompany the petition (See Exhibit #3 contained in the Circuit Court File)
- 2. The Petitioners appealed to the Circuit Court For Judicial Review on June 16, 1995
- On or about June 14, 1995, Baltimore County Department of Licenses and Permits issued a grading permit for subject BGE site at 1821 Ridge Road, permit number B237378. Those permits were issued based on BGE's submitted Building Permit Plan (Exhibit 1). On June 21, 1995, the County Department of Licenses and Permits issued permit number B237372 to construct 11 foundations for the substation addition.
- 4. On June 30, 1995 the Circuit Court for Baltimore County granted the Petitioners an Injunction to Stay Operation of Permits. (Exhibit 2 and See also Exhibit 26). Judge DeWaters found that the Petitioners had a reasonable expectation to prevail on the merits; that the Petitioners would be irreparably harmed by the substation's construction and that Petitioners need not post a bond.

- A Judicial Review was held on July 20, 1995 before the Circuit Court of Baltimore County and a decision was rendered on December 24, 1996, which affirmed the decision of the CBA (See Exhibit 12)
- 6. On January 3, 1997 a Motion to Alter or Amend the Judgment was filed by Petitioners.
- 7. On January 6, 1997 the Petitioners will file an appeal to the decision of Judge Lawrence Daniels to the Court of Special Appeals. (Exhibit 3) Petitioners will raise valid legal issues before the Court of Special Appeals, including the need to amend the final development plan for the substation that would be required to go to the County Planning Board and the legality of the granted variance. The CBA and the Circuit Court erred as a matter of law in granting BGE's Petition for Variance because the utility failed to establish the "uniqueness" of this site which would permit the application of the practical difficulty, or unreasonable hardship standard as described in Cromwell v. Ward, 102 Md. App. 691 (1995). Additionally, the petition alleges that the CBA and the Circuit Court erred in granting the Special Exception when it failed to consider all the tests set forth in Sec. 502.1 and Sec. 411 of the Baltimore County Zoning Regulations. Finally, the CBA and the Circuit Court erred in not enforcing the Baltimore County Code requiring an amendment to the Final Development Plan, briefed and argued in this case.
- 8. Petitioners will be irreparably harmed by the operation of said grading and foundation permits because the buffers and screening provided by the mature stand of 80 year old hardwood trees between the BGE substation and Petitioners' residences have been cut down in large numbers reducing the value of Petitioners' real property, significantly diminishing the peaceful enjoyment of their residential neighborhood. The large number of tall hardwood trees on the .7 acre site between the BGE substation and residential homes that has already been cleared is an obvious blight and major hardship to the adjoining property owners. With the grading, cutting and removal of trees and utility maintenance come a constant flow of trucks, heavy equipment, and parked vehicles owned by BGE and their subcontractors along Ridge Road, impeding neighbors' vehicle access to Joel Court and creating general disturbance in the immediate area. In addition,

loud construction noise emanates from the substation commencing at 7 a.m. All of this action constitutes a nuisance and dramatically reduces the opportunity and rights of adjoining property owners to fully utilize and enjoy their homes. See Affidavit of Carol Rytter, Exhibit 4, attached hereto and incorporated herein.

- Affidavit of Rosemary Hanley, attached hereto and incorporated herein as Exhibit 5, says that she is being permanently injured by construction of the substation pending its appeal because of the diminution of the value of her home having a 22,100 square feet electrical facility operating within ten feet of her property line.
- Brown, and Nigel Howse through their affidavits attached hereto as Exhibit 6A through 6F testify that without appealing their original assessment of property by the State of Maryland, Department of Assessments and Taxation their properties were reassessed decreasing the market value of their homes due solely to the proposed expansion of the substation. Petitioner Pamela Follo in her affidavit attached hereto as Exhibit 7 affirms this through her conversation with Mr Russ, Supervisor, with the State of Maryland Department of Assessment and Taxation Andrew Lansman (Exhibit 6 G) affirms that he did appeal his assessment and received a reduction in his assessment due to the BGE expansion.
- Petitioner Joseph Czajkowski, through his affidavit attached hereto as Exhibit 8, testifies that he is involved in a civil suit with J.G.S. Builders, Falls Road Limited Partnership, O'Connor, Piper and Flynn Realtors and Mr. Steven Edelin, Realtor, regarding the market value damage to his property that not only will result but has already occurred due to the proposed expansion of this electrical facility. He will produce expert testimony stating both current and future damages. The scheduling of court dates in these civil proceedings is pending. (Exhibit 9)
- 12. Excavation, stripping of mature hardwood trees, and construction of the expanded substation in a R.C. 5 zone prior to review by the Court of Special Appeals will create a use

incompatible with adjoining property, irreparably harming Petitioners. Petitioner Carl Follo through his Affidavit attached hereto as Exhibit 10, testifies that on June 18, 1995, he listed his house at 1 Joel Court for sale. His house was appraised at a value of \$415,000 prior to the issuance of the permits and construction and he has been advised by several real estate agents that he could expect to get only 75% of the appraised value, a reduction of \$106,250, because of the construction and substantial increase in size of the BGE substation. This is both immediate and substantial harm. He also testifies that since placing his house on the market he has not received any offer even though "like" homes in the area have sold and knows that this is due to the proposed expansion. He and his wife Pamela, are suffering immediate harm because he has been unable to attract interest from prospective buyers to his house because of the operation of trucks. heavy equipment, and erection of the planned electrical substation. Issuance of permit to construct 11 concrete foundations and work to perform same will cause immediate and irreparable harm to petitioners. It would set in motion the placement upon the substation site electrical equipment, lines and superstructures necessary to generate the requested electricity despite the fact your Petitioners have filed an appeal to the Court of Special Appeals challenging the CBA's and the Circuit Court of Baltimore County's approval of the variances and special exception. petitioners are attaching the CBA's and the Circuit Court of Baltimore County's decisions as Exhibit 11 and Exhibit 12.

- Petitioners have alleged that as part of their Petition for appeal that this facility is not needed and that BGE failed to establish their need in accordance with the Baltimore County Zoning Regulations, and there is not a scintilla of evidence to justify BGE's expedient construction efforts to expand the Ivy Hill Substation pending review by the Court of Special Appeals. (See Affidavit of Ronald Hanley, Exhibit 13 with attachments and incorporated herein. See also Exhibit 12, p 13-14, the Circuit Court opinion found Petitioners' argument "logical and commanding".)
- 14. Even in the event this Court believes that need has been established, BGE has testified under oath affirmed in the record, that there is an acceptable alternative solution for them. Lawrence Taylor, a BGE engineer, testified that a mobile trailer could be used pending the

outcome of the Petition for Judicial review. (Exhibit 14, letter of Clare Miller and Exhibit 15, testimony of BGE representative Lawrence Taylor). This mobile trailer was moved onto the site in the fall of 1995 with the full potential of phase I, allowing a 200% increase in electrical capacity and has been more than adequately servicing the community for approximately 15 months without detrimental effect to the service in the community.

- 15. Petitioners further allege BGE does not require a 22,000 sq. ft. facility, as testified before the CBA, in order to configure the electrical equipment within the substation to meet the need they defined before the CBA. In fact, during subsequent settlement proceedings, BGE proposed a new configuration which could be contained on fewer than 10,000 sq. ft. to meet the same need. (See Exhibit 27) Therefore, BGE will not be prejudiced by a granting of this stay until the Court of Special Appeals decision is rendered.
- 16. The county erred by issuing the above listed permits in the first place in that they do not comply with the decision of the CBA wherein it granted BGE's Petition for Special Exception and Variance. The plat to accompany the Special Exception (See Exhibit 3 contained in the Circuit Court file) established specified structure heights for equipment and uses for the site. Exhibit 1, attached hereto, the BGE Building Permit Plan, which was submitted to obtain the said permits shows different heights for their equipment exceeding the approved heights. In addition, it shows the creation of a location for a mobile transformer with guide posts that is not shown on the site plan approved by the CBA for the Special Exception. The court should compare the original site plan and the subsequent Building Permit Plan. See the affidavit of Ira Brown, Exhibit 16, and Chart attachment 16A.
- In August of 1995, the Petitioners filed a Petition for Special Hearing before the Zoning Commissioner of Baltimore County to address significant differences in the site plan approved by the CBA and the Building Permit Plan submitted to the Department of Permits and Licensing of Baltimore County (See Exhibit 17). The Special Hearing was accepted by the County and scheduled for October 30, 1995, Case No. 96-117-SPH. (Exhibit 18) At the request of Mr. Robert Hoffman, attorney for BGE, this hearing was postponed without the consent of the

The case was rescheduled for November 7, 1995. (Exhibit 19) Again at the request of Mr Robert Hoffman, without the Petitioners' consent, the case was postponed. On November 10, 1995 Carroll Holzer, Esq acting on behalf of the Petitioners, wrote a letter to Mr Jablon, Director, Department of Permits and Development Management, requesting that the hearing be rescheduled (Exhibit 20) After numerous phone calls to Mr. Jablon requesting rescheduling of this hearing it was set for July 11, 1996. Once again, Mr. Hoffman by letter dated June 24, 1996 requested an additional postponement. (Exhibit 21) On July 3, 1996 Mr. Jablon postponed this hearing pending the Circuit Court decision. (Exhibit 22) To date the Petition for Special Hearing has not been honored. Also in dispute is the question regarding what type of structures constitute a building permit. In a letter to Mr. Jablon dated June 28, 1995 (Exhibit 23) permits are addressed. Mr. Jablon's response dated July 13, 1995 raises several issues that need to be addressed before the Zoning Commissioner E. (Exhibit 24) The Petitioners plan to present evidence at this hearing that conflicts with Mr. Jablon's interpretation. The Petitioners requested this Special Hearing to establish whether BGE must abide by the CBA's decision on these issues. Since this hearing was requested to dispute the differences between the site plan that was approved by the CBA and the Building Permit Plan that BGE filed with the Department of Permits, as well as other jurisdictional decisions and the outcome could have a direct result on what is constructed on the site. The Petitioners believe that it is necessary that this hearing and any appeals resulting from of the Zoning Commissioner's decision be allowed to occur before any construction is permitted.

Petitioners' appeal, which will be filed in the immediate future, before the Court of Special Appeals, has a likelihood of success based on the legitimate legal issues raised and the facts preserved in the record. (See Judge Kahls Circuit Court decision concerning variances. Exhibit 25) See also Judge DeWaters decision regarding the previous injunction on this case wherein, he states: "These people will suffer and are suffering the construction of this facility by the Baltimore Gas and Electric Company at the present time despite the pendency of that appeal." (Exhibit 26, p 3) Further, Judge DeWaters stated, "there is continuing harm the more that this construction goes on and that becomes a more and more irreparable situation as each day goes by given the

present situation" (Exhibit 26, p 3) He states that the Petitioners have already been damaged and that their appeal has a likelihood of success based on legal issues

Wherefore, Petitioners respectfully request this Motion to Continue the Stay of Operation of Permits under Judge Edward DeWaters Order dated June 30, 1995 pending the decision by the Court of Special Appeals.

Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

Request for Immediate Hearing

Petitioners hereby request the Court to conduct an immediate hearing.

Carroll Holzer, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the ______day of January 1997, a copy of this foregoing Ex-Parte Injunction to Stay operation of Permits was sent to Robert Hoffman, Esquire, Venable Baetjer and Howard, 210 Allegheny Avenue, P.O.Box 5517, Towson, Maryland 21204.

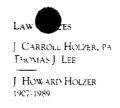
Carroll Holzer

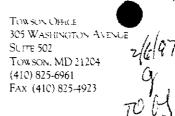
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the Day of	January, 1997, a copy of the
Motion To Continue the Stay of Operation of Permits was mailed fi	rst class, postage pre-paid, to
Robert A. Hoffman, Esquire, Venable, Baetjer and Howard, 210	Allegheny Avenue, Towson,
Maryland, 21285-5517; and Janet McHugh, Associate General Counse	el, Baltimore Gas and Electric
Company, 39 W. Lexington Street, 17th Floor, Baltimore, Maryland,	, 21201.

A:\Notices\BGE.NOA







Carroll County Office 1315 Liberty Road Eldersburg, MD 21784 (410) 795-8556 Fax: (410) 795-5535

February 6, 1997 #6803

Arnold Jablon
Director of Permits
and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No. 96-117-SPH

Friends of the Ridge v. BGE

Dear Mr. Jablon:

I received Mr. Hoffman's letter of January 22, 1997. Please let me remind all parties that my clients have paid for the hearing and it has been postponed long enough. It is time that the *Friends* of the Ridge get what they paid for and get this matter set for a hearing at the earliest opportunity.

J. Carroll Holzer

Very truly yours,

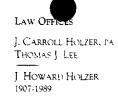
JCH:alt

cc: Robert Hoffman

Friends of the Ridge

C:\LETTERS\JABLON9 LTR





TOWN OFFICE 305 WASHINGTON AVENUE SUITE 502 TOWNN, MD 21204 (410) 825-6961 FAX: (410) 825-4923 CARROLL COUNTY OFFICE 1315 LIBERTY ROAD ELDERSBURG, MD 21784 (410) 795-8556 FAX: (410) 795-5535

12 147 call Rob + Italy call Rob to conserved data

January 16, 1997

Arnold Jablon, Director
Department of Permits and
Development Management
111 West Chesapeake Ave.
Towson, Maryland 21204

Re: 96-117-SPH Friends of the Ridge v. BGE

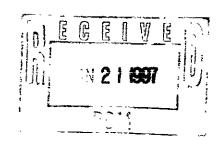
Dear Mr. Jablon:

On October 13, 1995, counsel for BGE, Robert Hoffman, requested that the above referenced Petition for Special Hearing filed by Friends of the Ridge be postponed until the Circuit Court for Baltimore County disposed of the Friends' Petition for Judicial Review, case No. 03-C-95-5315. On October 27, 1995, you granted Mr. Hoffman's postponement request. As you are probably aware, Judge Daniels rendered an opinion dated December 24, 1996 denying the requested relief of Friends of the Ridge. Therefore, I respectfully request the above matter be rescheduled at the earliest available date. If your office would call me at 825-6961, I will provide available dates on my calendar.

I. Carroll Holzer

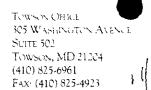
JCH:clg cc: Friends of the Ridge Rob Hoffman, Esq.

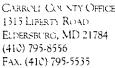
C:\letters\Jablon











(410) 795-8556 Fax. (410) 795-5535

November 10, 1995

Mr. Arnold Jablon, Director Department of Permits and Development Management County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

> Case Number 96-117-SPH Re.:

> > Friends of the Ridge

Legal Owner: Baltimore Gas & Electric Company

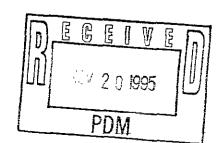
Dear Mr. Jablon:

I would request, now that you have granted a postponement for the hearing on the above captioned matter at the request of the attorney for the Legal Owners, that you reassign the case for hearing as promptly as possible. I would suggest a hearing be scheduled within the next two to three weeks in that it was not at the request for the Petitioner that this case was continued.

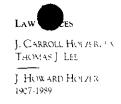
J. Carroll Holzer

Very truly yours,

Friends of the Ridge cc: Rob Hoffman, Esquire







TOWNS OFFICE 305 Wash NOTEN AVENCE SCITE 502 TOWNS, MID 21204 (410) 825-6961 FAX (410) 825-4923 CARROLL COUNTY OFFICE 1315 LIBERTY ROAD ELDERSBURG, MD 21784 (410) 795-8556 FAX: (410) 795-5535

18/1/95 SP PS

September 28, 1995

Mr. Arnold Jablon, Director
Department of Permits & Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re.: Case Number 96-117-SPH

BGE/Friends of the Ridge

yours,

Hearing scheduled for Monday, October 30, 1995

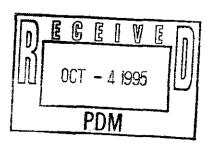
Dear Mr. Jablon:

cc:

I just received notice of the hearing scheduled for the Friends of the Ridge/BGE case for October 30. Please be advised that I have had on my calendar for a number of months the fact that I will be out of town from Saturday, October 28, to Sunday, November 5. I would therefore appreciate your rescheduling and perhaps having your assignment secretary contacting me in regard to available dates. Thank you very much for your consideration and prompt postponement of this hearing. If you need any further information, please feel free to contact me.

J. Carroll Holzer

Rob Hoffman, Venable, Baetjer & Howard



97-316

LE, BAETJER AND HOWARD, LLP

210 Allegheny Avenue Post Office Box 5517 Towson, Maryland 21285-5517 (410) 494-6200, Fax (410) 821-0147



OFFICES IN

MARYLAND WASHINGTON, D.C. VIRGINIA

Robert A. Hoffman (410) 494-6262



January 22, 1997

BY VIA FACSIMILE and FIRST CLASS MAIL

Mr. Arnold Jablon, Director Department of Permits and Development Management County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

RE: Case No.: 96-117-SPH

Friends of the Ridge v. BGE

Dear Mr. Jablon:

I received a letter from J. Carroll Holzer, counsel for Appellants Friends of the Ridge, in the above-referenced case wherein Mr. Holzer requests that a hearing be set on Appellants' Request for Special Hearing. While Mr. Holzer's letter correctly indicates that Judge Daniels rendered an opinion on December 24, 1996, denying Appellants' requested relief, the letter fails to inform you that Appellants have filed a Motion to Amend or Alter the Judgment and a Motion to Continue Stay of Operation of Permits. These motions have not been ruled on by Judge Daniels and are still pending.

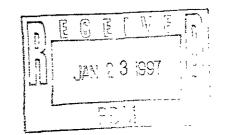
I am, therefore, writing to state my objection to the scheduling of this matter for hearing prior to any decision by Judge Daniels on the pending motions. In any event, even after such ruling, I would respectfully request that a scheduling conference with counsel be held prior to this matter being reset to fully discuss this issue.

Very truly yours,

Robert A. Hoffman

RAH:dk

cc: J. Carroll Holzer, Esquire Janet E. McHugh, Esquire TOIDOCS1/RAH01/0037191.01



96-3592

ABLE, BAETJER AND HOWARD, LLP

210 Allegheny Avenue Post Office Box 5517 Towson, Maryland 21285-5517 (410) 494-6200, Fax (410) 821-0147

Including professional corporations

thite

OFFICES IN

MARYLAND WASHINGTON, D.C. VIRGINIA

Robert A. Hoffman (410) 494-6262



June 24, 1996

Mr. Arnold Jablon, Director
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 96-117-SPH

Dear Mr. Jablon:

On October 13, 1995, I wrote to you (via Lawrence E. Schmidt) regarding the referenced case to request a postponement until a decision had been rendered by the Circuit Court for Baltimore County in Civil Action Case No. 03-C-95-5315. On October 27, 1995, you granted this postponement request, and I assumed the case would not be rescheduled until the Circuit Court issued its opinion. Today I received a Notice of Reassignment for Thursday, July 11, 1996, on the Special Hearing. To my knowledge, this new notice was not preceded by any written request to reschedule this hearing. I would respectfully submit that my request of October 13, 1995, and your postponement of October 22, 1995 indicate that this case should only be rescheduled following some ruling by the Circuit Court.

However, should you decide that this hearing must be scheduled in light of the lack of a Circuit Court ruling, I respectfully request that additional time be granted to prepare for the case. Approximately two (2) weeks is not sufficient notice, where BG&E is being forced to respond to a Petition filed by others on land it owns. Accordingly, I would ask that if necessary, you please allow the Petitioners and Baltimore Gas & Electric Company an opportunity to meet with you to come up with an appropriate schedule for this matter.





Mr. Arnold Jablon, Director
Baltimore County Department of Permits
and Development Management
June 24, 1996
Page 2

Thank you for your consideration.

Yours truly,

Robert A. Hoffman

RAH:pvb Enclosures

cc: J. Carroll Holzer, Esquire Janet E. McHugh, Esquire

TO1DOCS1/RAH01/0026693.01



210 Allegheny Avenue Post Office Box 5517 Towson, Maryland 21285-5517 (410) 494-6200, Fax (410) 821-0147



OFFICES IN

MARYLAND WASHINGTON, D.C. VIRGINIA



October 13, 1995



Lawrence E. Schmidt Zoning Commissioner for Baltimore County First Floor, Old Courthouse 400 Washington Avenue Towson, Maryland 21204

Petition of Friends of the Ridge for Special Hearing

Zoning Case No.: 96-117-SPH

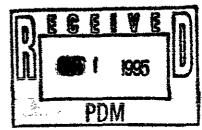
Dear Mr. Schmidt:

Re:

My client, Baltimore Gas and Electric Company, Inc. ("BGE") recently received a notice that a hearing has been scheduled on a Petition for Special Hearing filed by Friends of the Ridge to determine whether BGE's construction permits for the Ivy Hill substation are inconsistent with and in violation of the Special Exception approved by the County Board of Appeals in Case No. 94-452-XA. This hearing is apparently scheduled for October 30, 1995, at 11:00 a.m.

As you may know, the Comprehensive Map Process is now underway, and all issues must be filed by October 31, 1995. My office has a number of issues that must be prepared for filing. Additionally, I have five hearings scheduled for October 31 and November 1. Given my schedule, I do not believe that I will have an opportunity to prepare adequately for a hearing on October 30.

Further, the Petition for Special Exception and Petition for Variances, which were approved by the County Board of Appeals, have been appealed by Friends of the Ridge, et al., and this administrative appeal is currently pending before the Circuit Court for Baltimore County (Civil Action Number 03-C-95-5315). As part of this appeal, Friends of the Ridge requested and were granted a stay of the permits for construction, pending decision by the Circuit Court on the merits of the case. I believe it would be a waste of administrative resources to proceed with this hearing until a decision is issued by the Circuit Court and/or until the stay is lifted.





Lawrence E. Schmidt October 13, 1995 Page 2

Therefore, I am requesting that the hearing scheduled for October 30 be postponed and that a new date not be selected until after a decision has been rendered by the Circuit Court or until the stay is lifted.

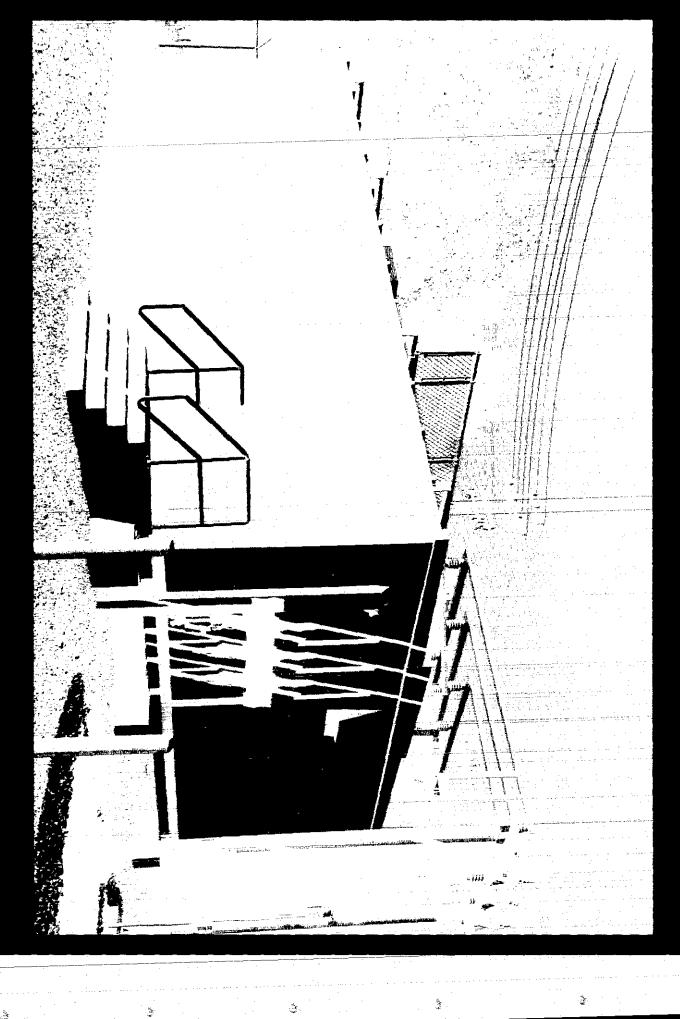
Very truly yours,

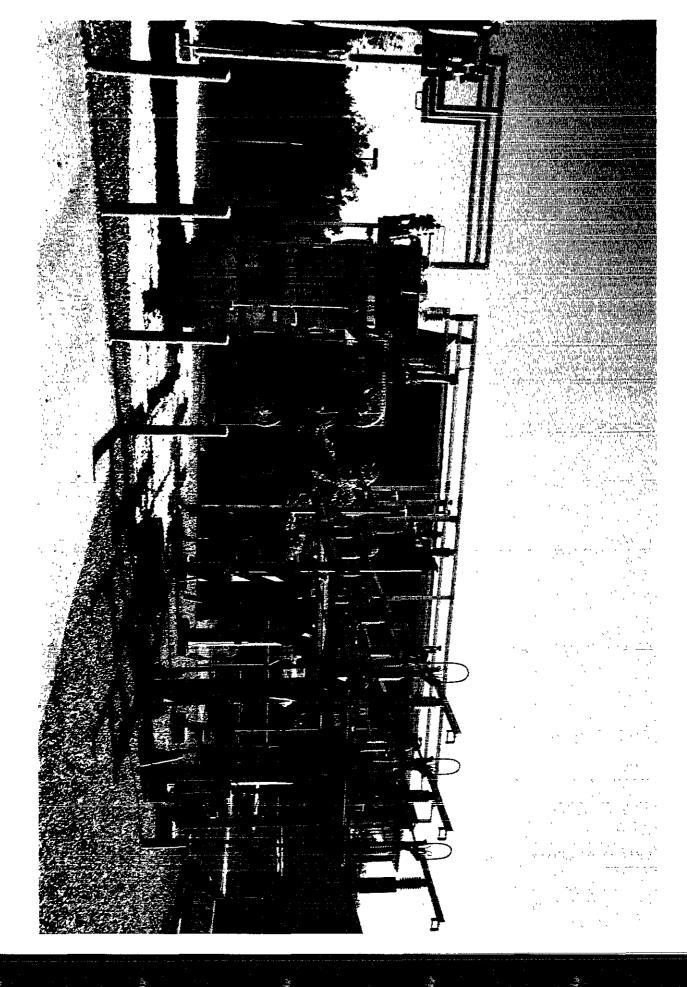
Robert A. Hoffman

RAH/pam

cc: J. Carroll Holzer, Esquire Martha A. Delea, Esquire

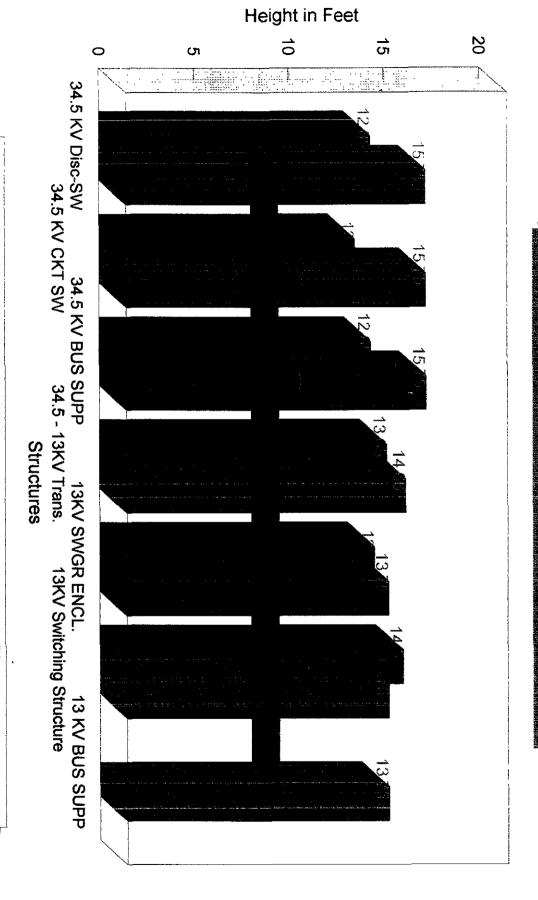
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ifferences in Height of Structures

(Approved Board of Appeals Plan vs Building Permit)



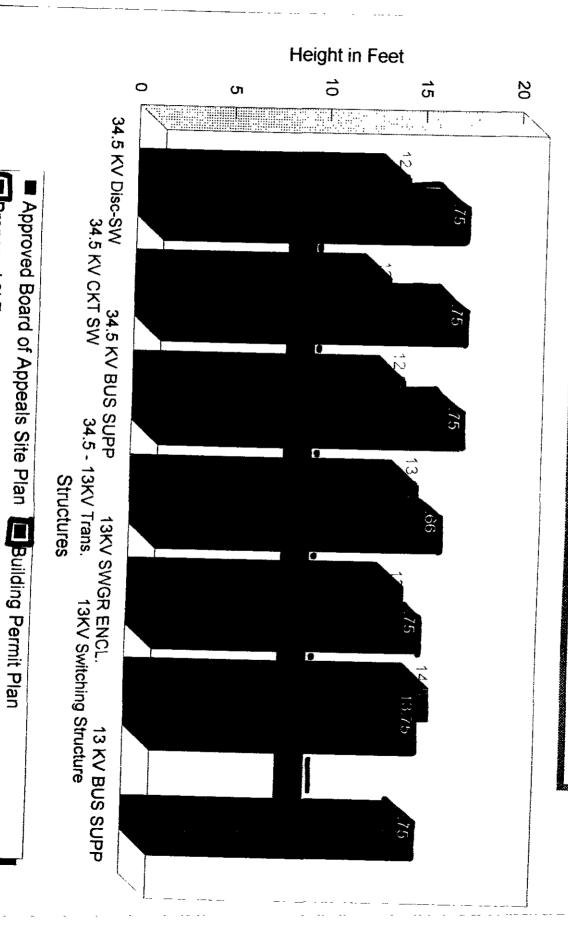
Approved Board of Appeals Site Plan 💶 Building Permit Plan

Proposed 8' Fence

H25-211-2

Differences in Height of Structures

(Approved Board of Appeals Plan vs Building Permit)



Proposed 8' Fence

and the bear with APPLIED: 06/06/95 NAME MICHAEL L FOWLER

COMPANY: BALTIMORE GAS & LIECTRIC * ESSUED ADDRIE 7609 ENERGY PKWY SIE 101

DECENCY ADDR2. BALTO MD 21226

PHONE # 787-6495 INSPECTOR 680

NUTES IN

LICENSE #:

PASSMORD

ENTER - FERMIT DUTAIL FF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE PF2 - APTROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY

PANEL BP1004

TIME: 11:11:50 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 06/06/95
DATE: 06/16/95 BUILDING DETAIL 1 FLS 14:53:29

TRACT: IN OCK.
PERMIT # B237372 FLANS: CONST PF PLOT 3 FLAT 0 DATA 0 EL 2 FL 1

TENANT

CONTR. OWNER BUILDING CUDE: 2

ENGNR: TMPRV 2 SELLR 11SE 16

FOUNDATION BASE WORK: CONST 11 FOUNDATIONS FOR SUBSTATION ADDITION.

TOTAL FOUNDATION AREA= 786SF . PP#93-141-94.

CONSTRUCTUEL SEWAGE WATER ALSO USING TAX#0822035540 & 2100009003.

4 NO NA REFER TO 0237375 FOR FENCE.

CENTRAL AIR

ESTIMATED COST

18,000.00 PROFOSED USE: OUTDOOR ELECTRIC SUBSTATION & ADDITION

UWNERSHIP: 1 EXISTING USE: OUTDOOR ELECTRIC SUBSTATION

RESIDENTIAL CAT

TOT APTS: #3DED: TOT RED. #EFF: #1BED: #2BED.

PASSWORD: 4 FAMILY BEDROOMS:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

will be began assessment the senty many made dailbox assessing in a distribution of our reservance

PANEL BP100:

TIME: 11:12:00 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 06908/95

14:53:29 PLS DUILDING DETAIL 2 DATE: 06/16/95

LOT SIZE AND SETBACKS

PERMIT 4: 8237372 BUILDING SIZE FLOUR: 786 SIZE: 0.408AC

FRONT STREET. HIDIH:

SIDE SIREFI. DEFTH GARBAGE DISE:

FRONT SETE 135' POWDER ROUMS: HEIGHT: STORIUS SIDE SLIB 210'/55' BATHROOMS

SIDE SIR SEIR KITCHENS

REAR SELB: 1951 LOT NOS: CORNER LOT: Y

ASSESSMENTS ZONING INFORMATION

DISTRICT: BLOCK:

PETITION: SECTION: IMPROVEMENTS: 0000000.0 TOTAL ASS.

LIBER: 000 DATE:

FOLIU: 000 MAP: CLASS: 08

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PLANNING INFORMATION

MSTR PLAN AREA: SUBSEWER: CRIT AREA: PASSWORD: bagin unit come con para more anua unite unda anne su a se a sesa anne anne more ce que Pres

ENTER - NEXT DETAIL PF2 - APPROVALS PT7 - PREV. SCREEN PT9 - SAVE PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

2C. Pet Esh# 5 # 5 Case - 46-117-5PH 2003

0017130.00

PANEL BP1011 LAST UPDATE 06/14/95 TIME: 11:13:43 AUTOMATED FERMIT TRACKING SYSTEM DATE 06/14/95 APPROVALS DETAIL SCREEN PLM 10:07:23 bepan-Adimentance PERMIT #: B237378 Wheen AGENCY DATE CODE COMMENTS Anne SEDI CTL 06/09/95 01 €K ZONING 06/12/95 01 APPRD. BY BD. OF APPEALS-VERBAL-KATHY W/JJS FUB SERV 06/09/95 θí FEE PAID-SW. JJS ENVRHNT 96/98/95 Θí ANE/EIR-6/8MJM

DS/RSK (P)

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL FF4 - ISSUE PERMIT

01

06/14/951

PERMITS

CLEAR - MENU

Case No. 94-452-XA Baltimore Gas & Electric Co.

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prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property being with BGE, and that any effect on property values in relation to the existence of the substation were already felt in the purchase of their respective properties. Furthermore, as indicated above, the health, safety and general welfare of other localities served by the Ivy Hill Substation continues to be suspect so long as the substation sits unaltered, as most homes in the area served by the Ivy Hill Substation rely on uninterrupted transmission of electric power as the sole source of energy for the heating of their homes.

Regarding 502.18, the subject proposal obviously does not tend to create congestion in roads, streets or alleys in the community; testimony was presented that the subject substation would be only periodically visited for saintenance of equipment.

The Protestants commented on the potential hazard from fire or other dangers, namely explosions, emitting from the expanded substation. The Board recognizes that the existence of electric equipment on the site presents an inherent danger. Monetheless, design standards are established both locally and nationwide for the siting and construction of such facilities, in addition to design and construction standards of the equipment to be placed thereon. Most obviously agrees to adhere to any and all building and electric codes and standards in the construction of the proposed enlarged substation. Therefore, the potential for fire or explosion at this particular substation is no greater than would

2.C. Pet Esh # 7 Mm \

Case No. 94-432-XA Baltimore Gas & Electric Co.

the visual impact that an enlarged substation presents. The Board is not compelled by the argument that property values will be negatively impacted; however, the Board recognizes that the residents have come to be familiar and comfortable with what has been termed the pastoral setting of the neighborhood. In recognizing that BGB is meeting the requirements for vegetative retention provisions of the regulations, the Board is compelled to require as part of any improvements pursuant to this Petition to include landscaping which serves to provide a visual buffer between the subject site and surrounding properties, in deference to the adjoining property owners. Therefore, the Board will grant the special exception, subject to restrictions.

The Petitioner finally must meet the tests under Section 307.1 in pursuing variance from lot line setbacks, said lot lines existing between tracts camed by the Petitioner. George Gavrelis clearly points out in his testimony that Section 306 of the BCIR speaks to lot area regulations for erecting substations. The Petitioner seeks a variance under 307.1 from BCER 1A04.3B.3 which requires a 50-foot setback from any lot line other than a street line. The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as most. The Petitioner recognizes that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within otherwise required setbacks, may be construed under 1A04.3B.3 as a principal building, and is therefore requesting such variance. The Board is compelled



everything else in this property which is a shed, but the antenna mast will remain in place.

- Q. Let's talk about each one of the pieces of equipment. First, let me ask you, the dark area where the driveway is, is that macadam?
 - A. Yes.

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- Q. The lighter color under the gray box, what will that be?
 - A. The lighter color will be crushed stone.
- Q. Will this entire assembly of equipment be encompassed by a fence?
- A. Yes. We'll have a seven-foot high fence and one foot of barbed wire on the top.

THE CHAIRMAN: How high?

THE WITNESS: Seven feet of chain link fence and one foot on top of barbed wire.

- Q. You mentioned a number of pieces of equipment.

 Do you have photographs of each of those pieces of equipment?
 - A. Yes.
- Q. If you would, if you could tell the Board -- give

me one photograph, tell me what the piece of equipment is, and then if you can explain what the equipment does. And if you could, before you start, let me get you to do something else.

Can you just tell the Board in a little better term than I did what a substation does?

- A. Yes. The electric substation, the purpose of it is to lower the voltage that's coming into the substation for residential use.
- Q. That's exactly what I said. If you could take the first photograph?
- A. The first photograph has two pieces of equipment. This piece of equipment which we call a circuit switcher, is basically just a switch that will transfer the supply into the station from one line to another to provide more reliability into the substation.
 - Q- How tall is that piece of equipment?
- A. It's about twelve feet high and it's shown in the zoning plan. All heights are shown in the zoning plan.
- Q. Is it also labeled on the plat where the switching gear is? In other words, which one of those

- offman12

- Grady-17

1 1	grass areas is the switching gear?
2	A. It's shown right here.
3	Q. Is that the only
4	A. And here
5	Q. So there are two shown on the plan. Then the
6	next piece of equipment?
7	A. A transformer, and this is the actual piece of
8	equipment that lowers the voltage in the substation.
9	Q. Where is that shown on the plan?
10	A. That transformer is shown here and here.
FFMAJ11	Q. So there are two transformers shown on the plan?
CGnady-12	A. That's correct.
)FFMAN-13	Q How tall are the transformers?
(Grady-14	A. It's about thirteen and a half feet.
15	THE CHAIRMAN: Mark those photos for me, Mr.
16	Hoffman.
17	MR. HOFFMAN: 6A and 6-B. One photo with two
18	pieces of equipment shown in the photo, so it will be 6A.
19	MR. HOFFMAN: The next piece of equipment, this
20	would be offered as Petitioner's Exhibit 6-B.

This photograph would show what?

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That photograph is a switch gear enclosure, and 1 Α. it's shown right here. We're only planning to have one. 2 The purpose of that is to offer protection to 3 electric lines going out of the substation and also 4 automatically protection for the whole substation. 5 6 THE CHAIRMAN: What's that called? 1 Grady THE WITNESS: Switch gear enclosure. THE CHAIRMAN: Switch gear enclosure. 9 That is shown as well in the drawing on the lower 0. left-hand side of the plat, is that correct? 10 FFMAL11 Correct. And the height is thirteen feet. 12 The height is also shown on the lower left side 0. 13 of the plat? 14 Α. Yes. 15 MR. HOFFMAN: Petitioner's Exhibit No. 6, please. FMAN-16 Are there any other pieces of equipment shown on Q. 17 the site plan? Frady-18 There's another piece of equipment shown, a Α. capacitor, that is shown both here and here, and the 19 purpose of that is to regulate voltage in the substation. 20 Fmay-21 There are two of those --٥.

Grady-1
FMAN -2
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Grady-14
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- A. There are also two of those shown.
- Q. -- on the site plan. How tall are the capacitors?
- A. They are about ten feet high, ten to twelve feet high.

THE CHAIRMAN: Do you want to mark that 6C, the capacitor?

- Q. Are there any other pieces of equipment on the substation site?
- A. There is the thirteen kilivolt capacitors, which are shown here, showing four of them, and the purpose is also to regulate voltage in the substation.
 - O. How tall are those?
 - A. They are about nine feet high.

MR. HOFFMAN: I offer that as Petitioner's Exhibit 6D.

- Q. Monica, you have described all of the different facilities and in most of the cases there are two of these particular types of equipment shown on this plan. Is this proposed substation designed in phases?
 - A. Yes. We have two phases to the substation.

proposing to plant the combination of these on the Joel Court side of our properties right here in order to keep as much of the existing woods and provide a buffer from neighboring properties.

- Q. Could the equipment be moved closer together so that it would have less of an impact on the interior lot lines? Or get them further away, I guess, is the best way.
- A. No. The equipment cannot be put any closer together.
- Q. Do you believe that if the variance from the interior property line were granted, there would be any impact on the surrounding properties?
 - A. No, I don't believe so.
- Q. Is all this equipment working in concert, or it all depends on each other? You can't have a substation without the various types of equipment you have described?
 - A. It works in concert. They are all tied together.
- Q. Ms. McGrady, in preparation for your testimony today, you reviewed the elements of Section 502.1, did you not?

A. Yes, I did.

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Q. I am going to ask you if you would to go through those.

Do you believe that the installation of the proposed substation, being both Phase One and Phase Two, would be detrimental to the health, safety or general welfare of the neighborhood?

- A. No, I don't believe so.
- Q. Can you explain why?
- A. I built similar substations in our other areas and my experience has been that it is not the case.
- Q. Would the installation of a substation create any congestion in roads, streets or alleys?
 - A. No, it would not.
 - Q. Tell the Board why not.
- A. Right now in our existing substation, we have about one vehicle going in a week. And for a new substation, it's going to be about the rame. These stations operate remotely.
- Q. Would the proposed installation create a potential hazard from fire, panic or other dangers?

l | will build whatever portion or substation in that parcel.

- Q. Is this the existing driveway to the Vinup's that you marked in black on Petitioner's Exhibit 3?
 - A. It makes use of the existing driveway.
 - Q. Does it enlarge it?

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- A. Yes, it does enlarge it.
- Q. Then, at the present time, when this plan, if it's approved, one would be able to stand on Ridge Road and look into the driveway to see this facility, correct?

You're not proposing any screening across the driveway or doors or gates, are you?

- A. Screening is adjacent to a substation fence and what you will see is the Leyland Cypress.
- Q. So you're saying when you look into here, you will see the Cypress along the fence, but this isn't going going to stop you from looking into the facility, correct?

 You're not proposing a gate?
 - A. No, I'm not proposing a gate.
 - Q. And this is macadized, what's marked in black?
- A. Well, most of it. There's two feet on each side of that road which is just shoulder.

- Q. But I am saying what you're suggesting -- and I thought you answered the black area was the macadamized --
- A. More or less. That's the zoning plat. It's not a grading plan.
- Q. So this really isn't accurate, is that what you are telling me?
- A. No, I'm not saying that. I'm saying the entrance road is twelve feet wide, and two feet of shoulder on each side of the road.
- Q. Then this is actually showing a wider area, correct? Did you measure that?
 - A. It's 16 feet.

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- Q. In terms of the existing driveway which comes into your substation now, that will be closed off, is that correct?
 - A. Yes, that's correct.
- Q. And that you would see if you're coming down Ridge Road, or Gent Road, almost runs directly into the existing driveway?
- A. It's where it's shown. I don't know general runs. It's as shown.

You're certainly welcome to go back and get something to look at.

- A. I don't have it with me.
- Q. You don't have it with you. Okay. Do you know the amount of impervious surface that you're adding to the existing three tracts?
 - A. No, I don't know.
 - Q. Did you try to calculate it?
- A. It will be calculated by the two engineers I have contracted. We comply with all the regulations of Baltimore County.
- Q. But you can't tell us right now what you're substituting in terms of the forest areas with impervious surface?
 - A. No.
- Q. What will the base or all of these various transformers and so forth be? The area that is marked in white, is that to be gravel?
 - A. That is crushed stone.
- Q. When you originally testified about the various heights of the components to this substation, it appeared

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they went anywhere from nine feet to thirteen feet, thirteen and a half feet?

- A. It goes as shown on the zoning plat, up to 14 and a half feet.
 - Q. And your fence is seven feet high with a half foot of barbed wire --
 - A. One foot of barbed wire. So it will be eight feet, total height.
 - Q. In terms of the appearance of all these transformers and the other components, the switchers and the capacitators, are they going to be painted in the same color that they appear to be on the photographs, a battleship gray color?
 - A. We are planning to paint them dark green because we think it will blend in better with that specific environment where there's a lot of green and woods and landscaping.
 - Q. So they are going to be painted dark green.

 What was the size of this photograph, Exhibit 6-B? And I think it showed this switch gear enclosure. That's thirteen feet high, is that correct?

1	A. That is thirteen feet high.
2	Q. And how wide is it? What is the footprint of
3	that? How wide is it and how long is it?
4	A. It's 35 feet long, 25 feet wide.
5	Q. Is that the size of, approximately, a modest
6	house?
7	A. I don't build homes. I don't know what you're
8	talking about.
9	Q. Do you live in one?
10	A. Yes. I haven't measured it though.
11	Q. Are you familiar, very familiar with the
12	Baltimore County zoning regulations?
13	A. I'm not very familiar.
14	Q. But you just finished testifying about it
15	complies with all the zoning regulations.
16	A. I answered a specific question that maybe our
17	lawyer took out of there, but I answered what I thought is
18	or is not the impact of this substation in the area.
19	Q. Let me ask you something about the impact of the
20	substation in the area.
21	Does a building that's 25 feet by 35 feet and
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thirteen feet high, painted green, is that consistent 1 arthitecturally with the rest of the neighborhood? 2 3 your opinion. MR. HOFFMAN: Objection. No bearing. 4 5 MR. HOLZER: Yes, it has a bearing under the zoning regulations. б MR. HÖFFMAN: 7 It's a permitted use. THE CHAIRMAN: I will overrule your objection. 8 9 You can answer. It does not look like any of the homes in the 10 11 area. MR. HOLZER: Thank you. Bear with me just one 12 13 second. I will ask you to look at Section 411.2 of the 14 Q. Baltimore County zoning regulations from which you have 15 been rendering your opinions that this facility will not 16 impair the public's use of the neighbors' property. 17 18 411.2 says, "In any residential zone in the metropolitan district of Baltimore County, public. 19 utilities, buildings and structures, to the extent 20

practicable, shall have an exterior appearance harmonious

As I understand it, you testified earlier that there will be only one person that comes there per week, is that correct?

A. Yes. That's about the amount of time that a person needs to come into a substation. I am testifying for a substation. Okay?

The substation operates automatically and remotely. There are a number of operations that can be done from a remote facility, so it's unmanned, and the person who comes about once a week, he's just coming to make sure that everything is working well, there's no problems in the substation, and, you know, basically to just check on the area.

- Q. Now, it's sort of at the end of your testimony, I believe I heard you testify you had taken certain measurements or readings of EMS from the existing facility as far as location. Did I hear you, or was I dreaming?
- A. You heard me saying, or what I was saying, that there have been measurements taken from our proprty in relation to the magnetic field. I did not take them.

 Another person who's also an expert witness today took

LEGAL DESCRIPTION FOX RIDGE ESTATES

ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being known as Fox Ridge Estates as shown on Subdivision Plan dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said tract being more particularly described as follows:

BEGINNING at a point at the intersection of the centerlines of Falls Road and Ridge Road. Thence along and within the right-of-way of Falls Road the following seven (7) courses and distances: (1) South 08 degrees 39 minutes 52 seconds East, a distance of 100.93 feet to a point for corner; (2) South 36 degrees 13 minutes 42 seconds East, a distance of 1372.94 feet to a point for corner; (3) South 37 degrees 11 minutes 10 seconds East, a distance of 121.29 feet to a point for corner; (4) South 53 degrees 29 minutes 18 seconds West, a distance of 49.05 feet to a point for corner; (5) South 33 degrees 16 minutes 19 seconds East, a distance of 410.74 feet to a point for corner; (6) Along a curve to the left, said curve having a radius of 2506.48 feet, an arc length of 31.33 feet, a chord bearing of South 32 degrees 54 minutes 52 seconds East, and a chord distance of 31.33 feet to a point for corner; (7) South 49 degrees 31 minutes 17 seconds East, a distance of 120.88 feet to a point for corner. Said point being on the most northerly corner of a tract of land now or formerly owned by Bahram Sina as described in deed recorded among the Land Records of Baltimore County in Liber OTG 4541, Follo 164. Thence along the perimeter of said Bahram Sina tract, the following two (2) courses and distances: (1) South 77 degrees 30 minutes 52 minutes West, a distance of 852.21 feet to a point for corner; (2) South 04 degrees 30 minutes 38 seconds East, a distance of 831.05 feet to a point for corner. Said point being a northeast corner of a second tract of land now or formerly owned by Bahram Sina as described in deed recorded among the Land Records of Baltimore County in Liber EHK, Jr. 6005, Folio 466. Thence along the perimeter of said second tract of Bahram Sina, the following two (2) courses and distances: (1) North 77 degrees 58 minutes 54 seconds West, a distance of 893.19 feet to a point for corner; (2) South 86 degrees 58 minutes 08 seconds West, a distance of 435.36 feet to a point for corner. Said tract being on a easterly line of a tract of land now or formerly owned by Martha C. Thompson as described in deed to Martha C. Thompson recorded among the Land Records of Baltimore County in Liber GLB 1832, Folio 243. Thence along the perimeter of said Martha C. Thompson tract, the following two (2) courses and distances: (1) North 01 degrees 55 minutes 08 seconds East, a distance of 739.26 feet to a point for corner; (2) South 82 degrees 57 minutes 37 seconds West, a distance of 24.75 feet to a point for corner. Said point being a easterly corner of a tract of land now or formerly owned by P. Bealefield as described in deed recorded among the Land Records of Baltimore County in Liber EHK, Jr. 6542, Folio 420. Thence along the perimeter of said P. Bealefield tract, the following two (2) courses and distances: (1) North 00 degrees 00 minutes 46 seconds East, a distance of 604.94 feet to a point for corner; (2) North 21 degrees 23 minutes 37 seconds East, a distance of 1014.07 feet to a point for corner. Said point being the most easterly corner of a tract of land now or formerly owned by BG&E, Co. as described in deed recorded among the Land Records of Baltimore County in Liber GLB 2911, Folio 289. Thence along said BG&E, Co. tract, the following two (2) courses and distances: (1) North 42 degrees 30 minutes 18 seconds West, a distance of 98.92 feet to a point for corner; (2) North 42 degrees 18 minutes 58 seconds West, a distance of 42.67 feet to a point for corner. Said point being within the right-of-way of hereinbefore mentioned Ridge Road. Thence along and within the right-of-way of said Ridge Road, the following four (4) courses and distances: (1) North 62 degrees 29 minutes 37 seconds East, a distance of 106.92 feet to a point for corner; (2) North 55 degrees 45 minutes 07 seconds East, a distance of 137.23 feet to a point for corner; (3) North 66 degrees 29 minutes East, a distance of 137.46 feet to a point for corner, (4) North 77 degrees 29 minutes 37 seconds East, a distance of 277.86 feet to the point of beginning.

CONTAINING 79,457 acres of land.

Exh. 6 2. C. Ret Exh + 8 Mills Mills. Cose 96-117 148

May 24, 1994

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE

AND ZONING VARIANCE

S/W cor. of inters. of Ridge * ZONING COMMISSIONER

Rd. and Joel Court
Ivy Hill Substation

* OF BALTIMORE COUNTY

8th Election District 3rd Councilmanic District

* Case No. 94-452-XA

Legal Owner & Contract Purchaser:

Tracts A & C: Baltimore Gas &

Electric Co.

Legal Owner: Tract B: Frederick *

R. Vinup, et ux,

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as both a Petition for Special Exception and Petition for Zoning Variance for the property located on the southwest corner of the intersection of Ridge Road and Joel Court in northern Baltimore County. Within the Petition for Special Exception, relief is requested to approve an outdoor electric public utility service center (electric substation) in an R.C.5 zone, pursuant to Section 1A04.2.B.11 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, if necessary, to amend the Fox Ridge Estates (formerly Forwood property) Final Development Plan. Within the Petition for Zoning Variance, a variance is sought from Section 1A04.3.B.3 of the iB.C.Z.R. to permit structures as close as 0' from an interior lot line in lieu of the required 50 ft. building setback. All of the relief requested is more particularly shown on Petitioners' Exhibit No. 1, the site plan to accompany the Petitions for Special Exception and Variance.

Appearing at the requisite public hearing held for this case were two representatives of Baltimore Gas and Electric Company (BGRE), owner of a portion of the subject property and Contract Purchaser of the remainder of the site. These included Ed Carmen, an electrical engineer, who studies BGRE's anticipated power needs, and Monica P. McGrady, who designed the

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ite plan. Also appearing on behalf of the Petitioner was Walter A. Reiter, Jr., a Real Property Appraiser. The Petitioner was represented by Robert A. Hoffman, Esquire and Martha Delea, Esquire.

Several residents of the surrounding locale also appeared in opposition. These included Andrew Lansman and Pamela Fallo who served as spokesman for several residents in the Foxridge Estates community. Also present were Joann Czaykowski, Raymond and Dorothy Fisher, Peggy Bealsfield and Dorothy Marsden. The Protestants were unrepresented by counsel, but for Rosemary Hanley who was represented by Mark K. Cohen, Esquire.

Testimony and evidence was received from Edward Carmen, a planner of electric systems with BGSE. Mr. Carmen observed that the subject site is divided into three tracts, known as lots A, B and C. Tracts A & C are owned by BGSE and tract B is under contract for acquisition by the company from Frederick R. and Ann L. Vinup. Presently, the tracts owned by BGSE are improved with a small electric substation. This existing substation helps supply electricity to the surrounding locale. The area that is provided service from this station encompasses approximately 6 sq. miles.

Mr. Carmen indicated that he has made a comprehensive study of the growth of this area and the company's needs in the future. Based upon the study, he has concluded that the station will be overloaded by the winter of 1995. Moreover, he observed that the existing station was installed in the mid 1950s. Because of the growth of the area since that time and advances in technology, BGEE, proposes revitalizing the improvements on site. Specifically, the electrical equipment on the property will be removed. In its place, modern equipment will be installed which will upgrade the electrical capacity of this substation. These improvements will result in more efficient and a higher capacity station. Mr. Carmen also testified that as part of the improvement of the site, the overhead wires which lead

to the property from Falls Road will be eliminated and cables will be placed underground. Mr. Carmen's testimony was technical in character and discussed extensively the need requirements as contained within Section 411 of the B.C.Z.R.

Also offering extensive testimony was Monica McGrady, a senior project engineer with BGSE and the author of the development plan. She confirmed Mr. Carmen's testimony about the history of the use of the site. She noted that the property originally owned by BG&E is labeled Tract C and was acquired in 1956. She offered several photographs, including an aerial photograph, which shows the existing station and use at the present time. Subsequently, BGEE purchased Tract A in December 1988 and has entered into a contingent contract with Mr. and Mrs. Vinup to acquire Tract B. recent acquisitions were made with an eye towards the proposed improve-The total area of the site is 2.9 acres and the property is zoned ments. R.C.5. Ms. McGrady also explained that all of the improvements on site, . with the exception of a 100 ft. antenna, will be dismantled and retired. Ultimately, the site will be improved with an upgraded station. these improvements will be completed in two phases. The first phase will involve construction on the west side of the property, on that portion of the site farthest away from the Foxridge Estates community. Ultimately, however, additional equipment will be installed in the central portion of the site. As shown on the site plan and described by the witness, the equipment installed will be of a different character then that now on the The tallest piece of equipment to be installed will be approximately 14 ft. high. Moreover, all of the equipment will be surrounded by a 7 ft. fence with an additional 1 ft. height of barbed wire. Moreover, significant testimony was offered regarding other improvements to the site including the installation of a new driveway on the northwest side.

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will replace two existing gravel driveways which access the property from the north and east. These existing driveways will be closed and replanted. Moreover, a large volume of testimony was offered about landscaping which is proposed on the site to buffer same from the surrounding community. Lastly, Ms. McGrady comprehensively discussed the requirements contained in Sections 411 and 502.1 of the B.C.Z.R. as they relate to the required special exception. Moreover, testimony was offered concerning the requirements in Section 307 of the regulations as same relates to the variance request.

Walter A. Reiter, Jr., a professional real estate appraisar, also testified about the proposed improvements. He particularly noted the elimination of the two existing driveways and burial of the electric cables from Falls Road as positive events in terms of property values in the community. He is also favorably impressed with the extensive landscaping proposed by the Petitioner. In his opinion, this screening will sufficiently protect the most affected properties. He identified those properties as the Marsden property to the west of the site, the Hanley property to the north and the Follo property to the west.

As to the Protestants, most of their concerns were voiced through their spokespersons, Andrew Lansman and Pamela Follo. Ms. Follo is the most affected property owner, residing immediately across Joel Court from the site. Mr. Lansman's house is the next lot down Joel Court. These witnesses voiced opposition to the project due to its alleged incompatible nature with existing uses. They are particularly concerned about the effects of the proposed electric substation within the midst of their residential community. Certain other concerns as to safety, traffic and effect on property values were also raised.

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It is indeed true that the substation is located within close proximity to the surrounding residential community. However, I am not persuaded that it will adversely affect same. It is of particular note that the electric substation use has been present at this location for many years. As noted above, BGAE has had a transformer and other equipment on this site since the mid 1950s. This matter appears to be a case of the most recent residents of the community objecting to a use which has been in the locale for many years. From the photographs submitted, the Foxridge Estates community is obviously new. In fact, Mrs. Follo indicated that her house was built approximately 3 years ago. Nearly 40 years have passed since BGAE acquired tract C and 4 years have elapsed since the company's acquisition of tract A in 1988. Clearly, the Protestants were aware of the long history of this use when their homes were built and on legal notice of BGAE's intentions.

Nonetheless, the concerns of the citizens are reasonable. They invest-. ed, no doubt, large sums to acquire their homesites and erect their dwell-However, in recognition of these concerns, the Petitioner has made ings. significant efforts to eliminate the effects of the proposed use. ly at the hearing, Mr. Hoffman and Mr., Cohen, representing the Hanleys, noted that an agreement had been reached between their respective clients to amend the plan to provide additional landscaping to the north of the Specifically, the company has agreed to install a row of evergreen site. trees along the front of the Hanley property. It is to be particularly stressed that BGGE's improvements in this respect will be made off site across Ridge Road. Thus, the existing forest on the north of the subject property will not be disturbed. The improvements on the Hanley property will be from that area across from the subject site to the existing evergreen trees which presently occupy the Hanley property adjacent to the

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intersection of Ridge and Gent Roads. BGSE has agreed to install evergreens not less than 8 ft. in height at a distance of 15 ft. from center to center. Moreover, the trees to be installed will be properly mulched and will be under warranty for a period of at least one year. Based on this agreement, the Hanleys withdrew their opposition to the Petition.

In addition to the landscaping proposed for the Hanley's benefit, the Petitioner has also agreed to install a second row of evergreens on the east side of the property. These trees will be installed along Joel Court at a point immediately north of Mrs. Follo's driveway to the driveway which is to be abandoned. This will be a second row of trees, to provide additional screening above and beyond what is already shown on the plan. That is, the site plan already shows a significant line of evergreens to be planted on the east side of the property. Moreover, additional landscaping is shown on the plan immediately surrounding the fenced area as well as a row of evergreens on the west side of the site shielding same from the Marsden property. I believe that all of these improvements are appropriate and will adequately buffer the site from the surrounding locale. In fact, with the advances in technology and noise control, the relocation and elimination of driveways and the burial of the overhead lines, the site may prove to be less obtrusive than before.

As to the Petition for Special Exceptions, I am, therefore, persuaded that same shall be granted. The testimony offered was persuasive that the Petitioner has complied with the requirements contained in both Sections 411 and 502.1 of the B.C.Z.R. As to Section 411, those standards pertain to requirements for public utility uses. Ms. Carmen's testimony was persuasive. The standards in Section 502.1 of the B.C.Z.R. relate to all special exception uses. In the instant case, I am convinced that use of the site,

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as proposed, will not be detrimental to the health. safety and general welfare of the locale.

As to the Petition for Variance, same should likewise be granted. It is of the utmost importance to note that the 50 ft. setback distance will be observed from the tract boundary. The variance in this case is technically necessary only because of the internal lot lines between tracts A. B E.C. In fact, clustering of the improvements within the interior of the site will result in a better buffering from adjacent properties. I am convinced that the Petitioner has met its burden as contained in Section 307 of the B.C.Z.R. to obtain this variance.

A final comment is in order about the necessity of amending the Final Development Plan for Fox Ridge Estates. As an adjacent property to the subject site, that Final Development Plan showed BGGE's tract. Although the proposed improvements are not shown, the ownership is indicated. Thus, it does not appear that an amendment to the Fox Ridge Estates Final Development Plan is warranted.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested should be granted.

ty this Aday of June, 1994 that, pursuant to the Petition for Special Exception, approval for an outdoor electric public utility service center (electric substation) in an R.C.5 zone, pursuant to Section 1A04.2.B.11 of the Baltimore County Zoning Regulations (B.C.Z.R.), be and is hereby GRANT-ED; and.

IT IS FURTHER ORDERED that a variance from Section 1A04.3.B.3 of the B.C.Z.R. to permit structures as close as 0' from an interior lot line in lieu of the required 50 ft. building setback, be and is hereby GRANTED,

subject, however, to the following restrictions which are conditions precedent to the relief granted:

- The Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason. this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- The property shall be landscaped in substantial accordance with the landscaping shown on Petitioner's Exhibit No. 1. Moreover, additional landscaping shall be provided on the Hanley property and on the east side of the site consistent with the findings set forth herein.

LAWRENCE E. SCHMIDT

Zoning Commissioner for

Baltimore County

LES: mmn

Baltimore County Government Office of Zoning Administration and Development Management



111 West Chesapeake Avenue Towson, MD 21204

June 20, 1995

(410) 887-3353

Ms. Carol Ritter 3 Joel Court Reisterstown, Maryland 21136

RE: BGE Ivy Hill Substation

8th Election District

Dear Ms. Ritter:

As you know, BGE has applied for and received permits to grade for construction of its Ivy Hill Substation.

These permits have been issued pursuant and subject to a recent Board of Appeals (Board) hearing decision approving the project.

As an appeal to Circuit Court has been filed by an attorney on behalf of many protestants, you request that these permits be rescinded or stayed pending the appeal.

Section 26-209 (e) of the Baltimore County Code states, as follows:

"While an appeal is pending before the Board, no permit may be issued and no plat recorded in connection with a plan which is the subject of such appeal. If the Board's order is appealed, the appellant may request that the court stay the issuance of a permit or the recordation of a plat pending its decision."

The law does not provide me with the authority to withhold permits once the Board has rendered its decision, providing, of course, that the request for permits comports with the Board's order.

I certainly understand your concern and the issue you raise. If the courts should reverse the Board's decision, BGE will be required to return the property, to the extent possible, to its condition prior to the grading of the property.

I recognize this incongruity. How are mature trees replaced? However, the courts and the law itself do not provide me with the authority to prevent the issuance of otherwise lawful permits, even though an appeal is pending before the courts.

2.1. Pet. Exh # 10 for ID HB 96-117-51H

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Ms. Carol Ritter Page Two June 20, 1995

The attorney for the appeallant, J. Carroll Holzer, is certainly familiar with the law cited above and, I am sure, is very knowledgeable about the procedure for requesting a judicial stay of the issuance of the permits. I would certainly cooperate with any such request and order for stay. If such a request had been made by the attorney to the courts immediately after the Board's decision, and granted, only then could I have refused to issue permits. Certainly, if the attorney had done so then, perhaps the severity of this situation could have been avoided.

I recognize that this response is not the answer you seek; however, I hope you can, at the very least, understand the limited scope of the authority we have at this point in the process.

Sincerely,

ARNOLD JABLON
Director
Department of Permits and
Development Management

AJ: ljb

June 28, 1995

Baltimore County Government
Office of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Attn: Arnold Jablon
Director of Permits and
Development Management

Dear Mr. Jabion,

We received your letter dated June 20, 1995 stating your refusal to rescind the permits which you issued to BGE and your inference that Mr. Carroll Holzer erred in not filing a request for a judicial stay of the issuance of those permits. After review of the present plan and the originally approved plan for special exception and variance we find that you in fact erred. Your letter states very clearly, "The law does not provide me with the authority to withhold permits once the Board has rendered its decision, providing, of course, that the request for permits comports with the Board's order"

Let us give you the definition of comport: "To agree, correspond, or harmonize, to support, to carry."

Taking that into consideration Mr. Jablon, we ask, did you ever read the Board's decision? Does the Board grant BGE permission to use this land as a parking facility for their mobile transformers? Since the very heart of our legal argument has been that BGE misrepresented the intended use of this substation, your issuing permits based on a construction plan that shows a mobile transformer garaging facility is outrageous.

Mr. Jablon, did you ever look at the "approved site plan" that the Baltimore County Board of Appeals based their decision on? Did you ever compare that plan to the construction plan that you issued the permits on? It appears that BGE fertilized all the equipment...it seems that all of the structures have grown, and one has even multiplied!

Mr. Jablon, we personally would like to know when your office last issued permits prior to the expiration of the 30 day appeal period. We have the "automated permit tracking system" from your office in hand. Let's be truthful, Mr. Jablon, at the time you issued the grading permits you had no way of knowing whether or not an injunction was going to be filed with the appeal. Your office issued permits for BGE so quickly that we question your motives! In addition, when this was brought to your attention you chose to ignore it!

Mr. Jablon, we seriously suggest that you review the site plan that the Baltimore County Board of Appeals approved and compare that plan to the construction plan that you issued the permits on

2. C. Petfar IDEN. # 1/20-117-SPH

Ask yourself whether they match. We demand that you immediately rescind the building permits for the following reasons:

1. Approved Board of Appeals site plan: 34.5 KV Disc-SW. - 12' 10 1/4" in height Building Permit Plan: 34.5 KV Disc-SW - 15" 9" in height (23% increase)

2. Approved Board of Appeals site plan: 34.5 KV CKT SW - 12' 0" in height Building Permit Plan: 34/5 KV CKT SW - 15" 9" in height

3. Approved Board of Appeals site plan: 34.5 KV BUS SUPP 12' 10 1/4" in height Building Permit Plan: 34.5 KV BUS SUPP 15" 9" in height

4. Approved Board of Appeals site plan: 34.5-13 KV Trans.

Building Permit Plan:

34.5-13 KV Trans.

13' 173/4" in height
(7% increase)

5. Approved Board of Appeals site plan: 13KV SWGR ENCL 13' 0" in height Building Permit Plan: 13 KV SWGR ENCL 13' 9" in height (6% increase)

6. Approved Board of Appeals Site Plan: 1-13 KV BUS SUPP Building Permit Plan: 2-13 KV BUS SUPP

(100 % increase

7. The building permit plan shows a road base approximately 2200 sq. ft. housing a 45'X10" mobile transformer equating to 450 square feet. It is a permanent garaging for this mobile transformer and was never shown, nor approved by the Baltimore County Board of Appeals.

We have filed for a Judicial Review. If you fail to rescind these permits judgment may result in a "de facto" approval because the existence of the expanded substation will no doubt influence future judicial decisions. That is, even if we win at a judicial review level it is highly unlikely that a judge would order the dismantling of an expensive 22,000 square foot electrical substation erected by our public utility. In addition, irreversible damage will be done to the community because you will have allowed BGE to construct a facility which was never approved by the Zoning Commission or Baltimore County Board of Appeals. You will have allowed them to construct a facility which is substantially larger and which is used quite differently from the intended use as stated in testimony during the hearing.

Sincerely,

Friends of the Ridge (410) 252-6122

Mr. Arnold Jabion
Director
Department of Permits and
Development Management
Office of Zoning Administration
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Jablon;

Reference: Permit # B237372 # B237378

I am one of the Protestants in the case involving BGE's Ivy Hill substation expansion. On June 30, 1995 the Circuit Court in Baltimore County granted the Protestants a stay on the permits that your office issued on June 14, 1995 and June 21, 1995. I have recently had a conversation with Mrs. Rosemary Hanley and she relayed your responses to her questions via your phone conversation of June 30, 1995. As a result of that conversation as well as your June 20, 1995 letter (copy attached) I need some issues clarified.

- 1. Is it <u>standard practice</u> for your office to issue permits on cases that have been decided and are within their appeal process time limit?
- 2. In your June 20, 1995 letter you state <u>"These permits have been issued pursuant and subject to a recent Board of Appeals (Board) hearing decision approving the project."</u> The Board never approved the revised (taller) building heights, never approved the expanded road base, and never approved the garaging facility for a mobile transformer. Therefore, since the plan submitted to your office by BGE was not the plan approved by the Board why were the permits issued?
- Per your June 30, 1995 conversation with Mrs. Hanley, your office issued the <u>foundation</u> permits only and D.E.P.R.M. issued the grading permits. You indicated that you never referred to the site plan approved by the Baltimore County Board of Appeals because BGE was not requesting a building permit. That appears to be correct since the "permit tracking" record I received from your office indicates "ZONING 06/12/95 Code 01 Comments, APPRD. BY BD. OF APPEALS-VERBAL-KATHY W/JJS. So my question is: <u>if you never looked at the site plan that was approved by the Board how did you know BGE was comporting with the foundation permits which your office did issue?</u>
- 4. Webster's dictionary defines a building as "Something that is built; a structure; an edifice." Since you seemed to be unsure of whether BGE would need a building permit for electrical structures or a mobile substation I need to know what County agency decides when a building

Z.C. Pet for Ident # 12 98396-117-594 permit is needed. If this is not the responsibility of your department, please advise which department (s) would be responsible.

- 5. The expanded road base that is shown on the construction plan was not approved by the Board. Since this does not comport with the Board's decision please advise what agency is/was responsible for approving this difference and issued the permits?
- 6. When hooking up all of their transmission lines to the substation does BGE need a permit, electrical, etc. and if so would that be from the County?
- 7 Does BGE need a permit to garage a mobile transformer on a RC-5 lot?

Mr. Jablon, you are correct; "mature trees cannot be replaced." Our attorney, Mr. Carroll Holzer has asked for an accelerated court date. For that reason, I am requesting a written response to these questions by July 6, 1995. I will be glad to pick up your response personally or you may fax your response at the number listed below.

Thank you

Pamela Follo 1 Joel Court Reisterstown, MD 21136 561-9319 252-5364 (FAX) Mr. James Dieter - Director
Department of Environmental Protection and
Resource Management
Baltimore County Government
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Dieter.

I am one of the Protestants in the case involving BGE's Ivy Hill substation expansion. On June 30, 1995 the Circuit Court in Baltimore County granted the Protestants a stay on the permits that were issued on June 14, 1995 and June 21, 1995. In a recent phone conversation, Mr. Arnold

Reference: Permit # B237372

Jablon indicated that his department issued the foundation permits while <u>your department was</u> directly responsible for issuing the <u>grading permits</u>. As a result of that information I need some

issues clarified.

1. By the time our community was able to set a hearing on the stay the trees had been cleared and the grading had begun. Is is <u>standard practice</u> for your department to issue permits on cases that have been decided and are within their appeal process time limit? We are now faced with sediment control issues that possibly would not have arisen if your department had abstained during the 30 day appeal process time limit.

- 2. Did your office ever review the site plan that was approved by the Baltimore County Board of Appeals? If not, how would your department know if the construction plan was comporting with the approved site plan? If yes, why were the grading permits issued since the site plan differs drastically from the construction plan that BGE submitted with the permit requests?
- 3. Mr. Jablon was unsure of which department is/was responsible for allowing an extended road base are on the subject site. Since the intended use of this area is to be a garaging facility for a mobile transformer which was never presented or approved by the Baltimore County Board of Appeals it is important to our case to understand which department issued permits allowing this much expanded road base from the approved site plan.

Our attorney, Mr. Carroll Holzer, has requested an accelerated court date. It is for that reason I am requesting a written response to these questions by July 6, 1995. I will be glad to pick up your response personally or you may fax your response to the number listed below.

Thank you Pamela Follo 1 Ioel Court Reisterstown, MD 21135 561-9319 252-5364 (FAX)

Z.C. Pet. fak#13 for ID

July 6, 1995

Mr. Arnold Jablon
Director
Department of Permits and
Development Management
Office of Zoning Administration
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Ivy Hill Substation - Permit # B237372 and #B237378

Dear Mr. Jablon:

I tried to reach you by telephone unsuccessfully earlier today. I received your letter dated June 20, 1995 and have also spoken to Mrs. Rosemary Hanley regarding your conversation with her on Friday, June 30. A few questions have arisen based on those communications which I would like to have answered. As Director of the Department of Permits for the Office of Zoning, I believe you can either answer these questions accurately or direct me to the individual who can.

- 1) BGE did not comport with the Board's decision regarding a road base. Who is responsible for approving the road base? We have spoken to DEPRON. Mr. Dieter informed us that BGE needs a permit for this and therefore this issue is one which falls under the Department of Permits.
- 2) Does BGE need a building permit to put electrical structures on this property?
- 3) Does BGE need a permit to house a mobile transformer on property zoned RC-5?

Mr. Jablon, this is not the first electrical substation erected by BGE in Baltimore County. This is not the first road base ever laid by BGE. This is not the first time BGE has housed a mobile transformer. You are certainly not new to the Department of Permits and Development Management in the Baltimore County Office of Zoning Administration. These questions are all deserving of timely answers and I look forward to receiving those answers from you. I can be reached at 561-5240. If you would like to provide a written reply, you may fax that reply to me at 889-8489. Thank you.

Sincerely,

Carol Price Rytter

and P. Potter

Z.C. Pet. Exh. # 14 for 1D pes

Mr. Arnold Jablon
Director
Department of Permits and
Development Management
Office of Zoning Administration
111 West Chesapeake Avenue
Towson Maryland 21204

July 6, 1995

RE: Ivy Hill Substation - Permit #B237372 and B237378

Dear Mr. Jablon

We are one of the Protestants in the case involving BGE's Ivy Hill substation expansion. We have been most upset that your office issued a foundation permit and Mr. James Dieter's office, DEPRM, issued a grading permit during the thirty day period legally available to me to file an appeal in Circuit Court. I am aware of your letter in which you state that the law has tied your hands and does not give you any discretion in awarding the permits, and that BGE must proceed at its own risk. I believe that BGE perceived very little risk in this situation and relies on the difficulty of obtaining an order to dismantle the substation once it is constructed. Furthermore, I am, however, amazed, appalled and angry at the speed in which these permits were granted. I do wonder if I would have been able to secure permits as a simple homeowner and taxpayer for home improvements as expediently.

A number of questions have emerged in recent days regarding your actions and your responsibilities:

- I understand that the grading permit was issued by DEPREM primarily for clearing the trees and for sediment control measures. According to Mr. Dieter, it does not involve any matters relating to paved surfaces, roads, driveways or road bases, except for some gravel at the driveway entrance for sediment control. Who is going to issue that permit? Who is going to compare the "new" construction plans with the site plan (layout, structures, roadways, and landscaping) originally approved by the Zoning Board of Appeals? Mr. Dieter told Mrs. R. Hanley and Mrs. P. Folio that the originial plans are not compared to the site plan submitted to obtain the permit for grading. He stated that there is an "assumption" that the two plans are the same. Will the same assumption be made when an application for a permit for roadways is submitted?
- 2. I know that you are aware that the construction plans also differ with the plans approved by the Board of Appeals regarding the presence of a 450 sq. ft. trailor supporting a mobile electric transformer. Does BGE need a permit to garage a mobile electric transformer on property zoned RC-5? Because this transformer is "mobile" it will be transported in and out of the facility with some frequency using a huge tractortrailer. Would this issue need to be examined at the Appeals Board since the original plans approved by the Board showed no indication of the transformer or road base on which it will sit?

2. C. Pet Esh#15 for 1D.

(ASR 96-117-51 THS 3. Does BGE need a building permit to put electrical structures including a 25 x 40 switchgear enclosure structure which is nearly 14 feet high right next to an area zoned RC-5?

Thank you for answering our last letter so timely, we look forward to an answer to these questions as soon as possible

Sincerly,

Mr. and Mrs. Dieter Langendorf

Aisabett M. Layerdorf

Fax: 410-560 7224

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DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

DIVISION OF INSPECTION AND ENFORCEMENT 887-3226

Job Location TV/ HILL District 8 Permit No. B	SUBSTATION BGE 23/3/8 Date 1/6/95
s	TOP WORK ORDER ORRECTION NOTICE ITE IN COMPLIANCE
I have, this day, inspected this the Baltimore County Code, Section	site and have found the following violation(s) of
ALL CLEARING & SILT FENCE INSTA EMBANKMENT PA Spotcheck dim Offset bookows in	Des 10 Work STOP PAGE STION AND POSSIBLE CLEARING OF DISTURBANCE. AT TIME ONTRACTOR HAD COMPLETED GRUBBING WITHIN L.O.D. RUMINON, SEDIMENT BASIN RUMINON, SEDIMENT BASIN RUMINON'S FORM From Fixed GICGIES L.O.D. Within L.A portion of Costern time In.
These conditions must be corre- Failure to comply with this direct posted for the referenced permit consideration of District court action Inspector Michael Moor	tive will result in the forfeiture of the security t and/or referral to the Office of Law for
Received by:	ekild
Site reinspection - date:	
Correction(s) approved:	Rose Marie Hadey M. Nove hold Colors Pass 252-5364 Marie BE1/3726

2.C. Pet. Feb. # 16 far ID.

Mr Arnold Jablon
Director
Baltimore County Zoning Administration
Office of Permits
Towson, Maryland

July 7, 1995

Dear Mr. Jablon,

As I have reviewed our telephone conversation of June 30, 1995 regarding BGE's expansion of the Ivy Hill substation, several questions persist. At that time I reported to you that the new construction plans deviate significantly from the plans presented to and approved by the Baltimore County Zoning Board of Appeals in terms of intended use (the permanent garaging of a mobile electric transformer on a trailer about 45 x 10 feet), an expanded road base which will serve as the parking pad for the trailer, and electrical structures which are significantly taller than the structures originally proposed, as well as additional structures. You explained to me that your office issued the foundation permit, but had not compared the construction plans to the original plans. You explained that the plans would need to be compared if a request for a building permit is presented to your office. You referred me to Mr. Jim Dieter, Director of DEPRN, to answer questions regarding roads because you stated that roads were part of the grading permit issued by his office.

Mr. Jablon, I request that you respond to the following questions:

- 1. I met with Mr. Dieter on Wednesday, July 5, 1995 regarding the grading permit. He explained that the purpose of the grading permit was the clearing of trees and establishing sediment control measures. He opened the file and showed us the sediment control plan. (Notably, the height of the structures shown on the plan mirrored the height of the structures shown on the original plan, shorter than the actual plans for construction, and his plan did not show the revised plans for an expanded road base and a mobile electrical transformer.) He reported that the grading permit does not address the issue of driveways, a parking lot, or an expanded road base on which the transformer will be parked. He explained that roadways, driveways, road bases, and parking lots require a building permit, which is issued by your office. I am certainly confused by the discrepancy between your reply and Mr. Dieter's. Mr. Jablon, who issues the permit for condraws, driveways, parking lots, and expanded road bases? Will it be necessary for that person to compare the construction plans to the original plans approved by the Board of Appeals? Do the plans on which the permit is based need to comport with the Board's plans? Does BGE need to apply for a permit to construct a driveway, a parking lot, and an expanded road base to be used as a parking pad for a mobile transformer?
- 2. When we last spoke you explained that your office issued the foundation permit. You said that you hadn't reviewed the construction plans to compare them to the plans approved by the Board of Appeals. You explained that review would be necessary if BCFE applies for a building permit. I am somewhat confused because you also stated that the law requires you to issue those

2 C Pet Esh # 17 for 1D

permits if the plans "comport" with the approved plans. Mr. Jablon, how did you know that the foundation permit which called for eleven concrete and steel foundations comported with the approved plans if you did not review the approved plans prior to issuing the foundation permit?

- 3. During our telephone conversation I asked whether an electrical structure which needs to be mounted on a concrete and steel foundation and which may exceed 15 1/2 feet is considered a building for the purpose of issuing a building permit. You responded that you did not know the answer to that question and you were reluctant to proffer an opinion on the question at that time. It occurs to me that BGE has built multiple electrical substations for transmission and distribution during your tenure. A precedent has surely been set during that time. Mr. lablon, does BGE need to apply for a building permit to erect electrical structures ranging between 12 and 15 1/2 feet high and sit on a concrete and steel foundation; does BGE need to apply for a building permit for a switchgear enclosure structure which has four walls, a roof and is approximately 25 x 40 ft in dimension? Will the office which issues these permits be required to determine whether the construction plans comport with the plans approved by the Board of Appeals?
- 4. How do you define a mobile electrical transformer which sits on a trailer 45 x 10 feet? Would I be allowed to park that structure permanently on my property? Is BGE allowed to park that structure on an area designated as RC-5? Will BGE need a permit to garage that monstrosity in my neighborhood? Does BGE need to return to the Board of Appenis for approval to park a mobile transformer at this facility since it was not part of the plan approved by the Board and since it represents a change in intended use for the facility?

Mr. Jablon, I respectfully request that you respond to these questions in writing as promptly as possible since we will be appearing in Circuit Court in less than two weeks. Thank you.

Sincerely,

Rosemary C. Hanley 1820 Ridge Road Reisterstown, Maryland 21136 July 13, 1995

Mr. Arnold Jablon Director, Baltimore County Zoning Administration Office of Permits Towson, Maryland

Dear Mr. Jablon:

Several residents in the Ivy Hill area have written or telephoned you within the past week with questions regarding the Ivy Hill Substation expansion permits. I have personally telephoned your office, and faxed my questions to you. To date, we have received no reply. I respectively request a prompt written response to the following questions. I believe you have all the background information so I will simply relterate my questions.

- 1) Who issues the permit for roadways, driveways, parking lots, and expanded road bases? Will it be necessary for that person to compare the construction plans to the original plans approved by the Board of Appeals? Do the plans on which the permit is based need to comport with the Board's plans? Does BGE need to apply for a permit to construct a driveway, a parking lot, and an expanded road base to be used as a parking pad for a mobile transformer?
- 2) When you spoke to Mrs. Rosemary Hanley on June 30, you explained to her that your office issued the foundation permit. You said that you hadn't reviewed the construction plans to compare them to the plans approved by the Board of Appeals. You explained that review would be necessary if BGE applies for a building permit. We are confused, because you also stated that the law requires you to issue those permits if the plans "comport" with the approved plans. Mr. Jablon, how did you know that the foundation permit which called for eleven concrete and steel foundations "comported" with the Board's approved plans if you did not review the approved plans prior to issuing the foundation permit??
- 3) Does BGE need to apply for a building permit to erect electrical structures ranging between 12 and 15.5 feet high and sit on a concrete and steel foundation? Does BGE need to apply for a building permit for a switchgear enclosure structure which has four walls, a roof and is approximately 25 x 40' in dimension? Will the office which issues these permits be required to determine whether the

Z.C. Ret Esh# 18 For 1)

construction plans comport with the plans approved by the Board of Appeals?

4) What definition does a mobile transformer which sits on a trailer 45 x 10 ft fall under? Does BGE need a permit to garage that beauty on their RC-5 lot? Does BGE need to return to the Board of Appeals for approval to park a mobile transformer at this facility since it was not part of the plan approved by the Board and since it represents a change in intended use of the facility?

Same questions, Mr. Jablon - still begging for accurate, reliable, lawful answers.

BGE has built several substations since you have held your current position. Therefore, these questions have certainly all been addressed before.

I look forward to your response. My fax number is 889-8489.

Sincerely,

Carol Rytter

Baltimore County Government Department of Permits and Licenses



111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3610

July 13, 1995

Ms. Pamela Follo 1 Joel Court Reisterstown, Maryland 21136

> RE: BGE Ivy Hill Substation 8th Election District

Dear Ms. Follo:

I have received many letters and telephone calls regarding the applications for permits by BGE for its Ivy Hill substation.

As I have explained, obviously not well or thoroughly enough, all permit applications are not reviewed for the same issues, as there are many different types of building permits. The Department of Permits and Development Management (PDM) is responsible for issuing all permits, but not responsible for reviewing or approving all permits.

A grading permit is applied for through this department; however, it is given to the Department of Environmental Protection and Resource Management (DEPRM) for its review and approval. That department does not issue the permit but is responsible for reviewing and approving the grading plan. It did review and approve the plan and the permit was issued.

BGE also applied for a foundation permit. This permit is reviewed and approved by PDM. A foundation permit provides only the ability to "dig a hole" in the ground and pour concrete. The applicant must state what the foundation will be used for, but must also include knowledge that while the foundation will be used for a stated, specific purpose, the foundation permit is issued at the holder's risk. This particular permit does not commit Baltimore County to issue any further permits, Section 112.7, BOCA. The benefit for such a permit is that it gives the applicant the opportunity to begin excavation and pour concrete. If the applicant does not get all of the required approvals for the building itself, the excavation and foundation would be filled in and covered. A foundation permit does not allow the construction of the building itself. The plan accompanying the foundation permit need not show the building itself or its height. Such information is not required nor necessary. Obviously, it is necessary to check the location of the proposed foundation, but it is not necessary to know the type or height of the building itself. When the

2. C. Ret. for Ilu # 19

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Ms. Pamela Follo Page Two July 13, 1995

applicant applies for a building permit to construct the building, the Baltimore County Building Engineer would review the accompanying plan to ensure that structurally the foundation and the building were competible and otherwise in compliance with the building and fire codes. Other agencies would review the plan for issues within their areas of responsibility, height for example, and insure that the plan was in compliance with the Board of Appeals (Board) order.

BGE did show on its grading plan and foundation permit plan the building and its height, in excess of the height shown on the plan approved by the Board. You have drawn my attention to this; however, as I have previously indicated, this was information not necessary for the issuance of these two specific permits. The vast majority of plans submitted with both types of applications for these permits do not show such information, simply because it is not required.

If BGE should apply for a building permit to construct the building, the accompanying plan will be carefully reviewed for the issues you raise. At that time, height, driveways, roads, and parking lots will be reviewed and compared with the plan approved by the Board, or the Courts. Changes to height, size, and number of buildings would be material, in my opinion, and require a further hearing before the Hearing Officer or the Board. Changes such as to the width of the road most likely would not be considered material and not require a further hearing. Unfortunately, I cannot be more definitive, because these decisions are not made by one individual but reviewed collectively by all of the reviewing agencies and a decision then made. The Department of Public Works and DEPRN would be the reviewing agencies as to the construction of the road base and they would determine whether that which is proposed complies with the law. Certainly, if there is a disagreement by BGE or by the community with a final decision on these issues an appeal lies to the Board.

It is my opinion that BGE would have a petition for a special hearing to amend its plan if it wants to park a trailer, 45' by 10', on the property, if not already approved; however, a mobile electrical transformer sitting on such a trailer would not require a permit as this use is governed and under the sole jurisdiction of the Public Service Commission (PSC). In addition, no permit would be required for an "electrical structure", presumably a pole or tower, ranging in height between 12 and 15 1/2 feet. Although any such structure would have to conform to the Board's order, this would also be under the sole jurisdiction of the PSC.

A building permit would be required for a structure enclosing switchgear.

Ms. Pamela Follo Page Three July 13, 1995

A question has been raised about construction plans. I am not sure what this means, but the actual, physical construction of any building is not covered by an order of the Board or of the Courts. The location of any construction must be in accord with such an order.

I hope that I have been able to provide the answers to your questions.

Sincerely,

Awald Jubbangs

Director

Department of Permits and Development Management

AJ:ljb

Case No. 94-452-XA Baltimore Gas & Electric Co.

the visual impact that an enlarged substation presents. The Board is not compelled by the argument that property values will be negatively impacted; however, the Board recognizes that the residents have come to be familiar and comfortable with what has been termed the pastoral setting of the neighborhood. In recognizing that BGE is meeting the requirements for vegetative retention provisions of the regulations, the Board is compelled to require as part of any improvements pursuant to this Patition to include landscaping which serves to provide a visual buffer between the subject site and surrounding properties, in deference to the adjoining property owners. Therefore, the Board will grant the special exception, subject to restrictions.

The Petitioner finally must meet the tests under Section 307.1 in pursuing variance from lot line setbacks, said lot lines existing between tracts owned by the Petitioner. George Gavrelis clearly points out in his testimony that Section 306 of the BCER speaks to lot area regulations for erecting substations. The Petitioner seeks a variance under 307.1 from BCER 1A04.38.3 which requires a 50-foot setback from any lot line other than a street line. The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as moot. The Petitioner recognises that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within otherwise required setbacks, may be construed under 1A04.38.3 as a principal building, and is therefore requesting such variance. The Board is compelled

2 C. Pet. for Iden, # 20



Case No. 94-452-XA Beltimore Cas & Electric Co.

to address the issue of 307.1 pursuant to the Petition. As stated by Mr. Gevrelis in his testimony, the Board finds that the application of Section 306 points to the fact that public utilities are unique in their requirements. Therefore, the spirit and intent of the BCSR in height, area, off-street parking and sign regulations are met by the subject Petition. Since the Petitioner seeks relief from 1A04.38.3, the Petitioner must meet the tests in trying to prove that special circumstances or conditions exist that are peculiar to this land or structure that is the subject of the variance request. In David Crossell v. Arthur Thomas Ward, III, CSA No. 94-617, filed January 4, 1995, Judge Cathell, the Court of Special Appeals, states that the conditions which are peculiar to the land or structure must be set before the tests for strict application of the BCER and any resulting practical difficulty or unreasonable hardship are reviewed. The Board finds as a fact that the existing electrical substation is a substation which is far underwised in capacity for the required demand in the existing An immediate need in increased capacity has been locale. adequately demonstrated to address the issue of an unusual condition which exists with the existing structure. mandated to increase the capacity of any substation in order to stay sheed of demand. The conditions which exist in the existing substation are unique in that BGB has been unable to even meet existing demand. The Board finds that the existing conditions and insufficient capacity force BGE to increase capacity; furthermore, in order to accommodate existing and increasing demand,

Service Commission is and does very briefly. First, does the Public Service Commission as a -- is it a state agency that's set up?

A. Yes, it is a separate state agency.

- Q. And as a state agency, does it regulate substations such as the Ivy Hill substation that we have being proposed here?
- A. The Public Service Commission regulations do not say anything about substations regarding their design or placement.
- Q. Okey. So I take it, then, that normally they, the Public Service Commission, then would not review or approve or disapprove a substation design by BGEE?

MR. MOFFMAN: Objection. He is leading this witness again. And he is going to be his witness and -- MR. HOLSER: He is a public servent.

THE CHAIRMAN: He is leading, but I am going to overrule the objection.

G. My question was, does the Public Service Commission approve or reject designs of substations by

Z.C. Pet Exh# 21 for ID.

County Board of Appeals reviewing this zoning issue, is

there any other -- will the Public Service Countesion

review eay portion of this proposel by BGLE?

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- A. They are not required to review that proposal. .
- Q. Okey. If BGEZ obtained approval from this Board to enlarge their substation to the size that they are projecting -- are you familiar with what they are projecting here?
- A. Yes. I have briefly reviewed the plans for the substation.
- Q. Okay. If they were to approve that, at any time later on, if additional transformers or additional equipment were to be placed in this substation, would the Public Service Commission require BGSE to come before them and tell them what they were doing?
- A. Only if the equipment placed would be operating above 69,000 volts.
- Q. And if the equipment that is to be operated or the lines that were to lead into the substation were below 69 KV, then there would not be any approval from the Public Service Commission?
 - A. That is correct.

Q. (MR. SCHUETI) Excuse me. Tou said "RV," he

MR. HOLIER: I would like to know --

A. "EV" refers to a kilovolt, which is a thousand volts. We are talking about 69,000 volts. He said *69 KV." Same thing.

MR. HOLSER: I really didn't know what I was saying, Mr. Schuetz. In all homesty, I was surprised that I was right.

- Q. (MR. MOLIER) Are you required -- when I say "you," I mean the Public Service Commission, if I lapse end slide into "you." Is the Public Service Commission required to approve any lines below 69 KV that may lead into or out of the Lvy Mill substation?
- A. No. The Public Service Commission will not be involved in approving any designs or construction of lines as long as they are below 69,000 volts.
- Q. Now, I would show you a series of pages to a document and ask you to take a look at those pages and tell me if you are femiliar with them.
 - A. Yes, I am familiar with these.
- Q. Just hold on to them for a second. In response to the inquiry that you've testified from Mrs. Pem Pollo,

2 22nd, 1994, is the letter from BGEE to you, which you've pretty much summerized already; is that correct?

- A. That is correct.
- Q. Thank you.

HR. HOLSER: I've already provided a copy to counsel. I would at this point move this entire packet as Protestants' Exhibit No. --

MS. LEVERO: 11.

MR. HOLZER: -- No. 11.

MR. SCHUETE: It's No. 11.

- Q. How, other -- you've already eddressed my question as it relates to the Public Service Commission being available in the future to monitor what happens at this substation. Do you know whether any other federal, etate or any other local agency other than this Board will be looking or watching over this substation if changes are made in it?
 - A. I do not know of any other agency.
- Q. Okey. Prom a general standpoint, is the Public Service Commission aware that -- strike that.

You said you are somewhat familiar with the site

COMPSSIONERS

H RUSSELL FRISRY JR

CLAUDE M LIGON E MASON MENOPICKSON SUSAMME SADGAN GERALD L THORPE



BRYAN G MOORHOUSE CEMPRE TOWNS DANIEL P GANAGAN ENCYMENTATION GREGORY V CARMEAN FREUINLANCIO

PUBLIC SERVICE COMMISSION

WILLIAM DONALD SCHAEFER TOWER 6 ST. PAUL STREET BALTIMORE, MARYLAND 21202-6806 (410) 767-8000 FAX NUMBER (410) 323-6465

August 11, 1995

Ms. Pemele Folio 1 Joel Court Reisterstown, Maryland 21136

Dear Ms. Follo:

Pursuant to your request, I have reviewed the letter you received from Arsold Jeblos, Director of the Department of Permits and Development Management for Beltimore County. I have also discussed this metter with our Engineering Division. This is to advise you that the Commission does not have jurisdiction over the siting of mobile electrical transformers.

Very truly yours,

Bryan G. Moorhouse General Counsel

see/falls

cc: Joseph H. Walter, Chief Engineer

To: The Honorable Bruce Babbitt Secretary of the Interior 1849 C. Street N. W. Washington, D C. 20240 202-208-6956 - FAX

Dear Mr. Babbitt,

Our community has contacted your office previously requesting support in our opposition to our utility, Baltimore Gas and Electric Company, intentions on the expansion of a rural substation in our neighborhood. "Friends of the Ridge" are scheduled to appear at a Petition for a Special Hearing on November 7, 1995 before the Baltimore County Zoning Commissioner.

The Baltimore County Board of Appeals stated as a legal fact that there were state and national guidelines that BGE were required to adhere to pertaining to distribution substations such as the one that BGE is proposing to erect in our neighborhood. (Please see copy of that legal opinion attached that was issued on May 31, 1995 attached) Since I have been unable to ascertain those guidelines I was hoping you could locate the correct agency who oversees and verifies that these guidelines are being adhered to. We would greatly appreciate it if you could somehow have the following questions answered:

- 1. Exactly what Federal agency oversees distribution electrical substations that have transformers below 69KV's?
- 2. How often are these facilities inspected and where are the reports of the findings of these inspections filed?
- 3. When specifically was the last time the Ivy Hill substation that is located at Ridge Road and Joel Court in Reisterstown, Maryland inspected?

Mr.Babbitt, we have requested this same information from our State Government but because the Board of Appeals indicated that the Federal Government was also involved we would appreciate this information by no later than November 5, 1995 since our court date is scheduled for November 7, 1995.

Thanking you in advance for your assistance in this matter.

Pam Follo- Friends of the Ridge 1 Joel Court Reisterstown, Md. 21136 410-561-9319 - Phone 410-252-5364 - Fax

2.C. Pet Exh # 23 for 10



United States Department of the Interior

OFFICE OF THE SECRETARY Washington, D.C. 20240

NOV 2 2 1995

Pam Follo 1 Joel Court Reisterstown, MD 21136

Dear Ms. Pollo:

This is in response to your letter of October 20, 1995, to Secretary Bruce Babbitt concerning the expansion of an electrical substation in Reisterstown, MD which is owned by the Baltimore Gas and Electric Company. We apologize for the delay in responding to your letter.

This Department has no jurisdiction by law for siting, design and/or construction standards for electrical substations nor does this Department inspect such facilities. Rather, the jurisdiction for these actions is within the purview of state and/or local governments.

Please note that the design standards which are mentioned in the attachment to your letter refer to industry-wide standards which are self-imposed by the utility industry.

We hope this information will be helpful to you.

Sincerely,

Willie R. Taylor

Director

Office of Environmental Policy and Compliance

2. C. Pet. Exh # 24 for 1D



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